NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

Congressional Information Service, Inc.
Washington, D.C.

WATER CLAIMS OF THE PAPAGO TRIBE

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2114 and H.R. 5118

TO PROVIDE WATER TO THE PAPAGO TRIBE OF ARIZONA, TO SETTLE PAPAGO INDIAN WATER RIGHTS CLAIMS IN PORTIONS OF THE PAPAGO RESERVATIONS, AND FOR OTHER PURPOSES

MARCH 31, 1982

WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE
97-363 O WASHINGTON : 1982

S961-16

SELECT COMMITTEE ON INDIAN AFFAIRS

WILLIAM S. COHEN, Maine, *Chairman*

BARRY GOLDWATER, Arizona	JOHN MELCHER, Montana
MARK ANDREWS, North Dakota	DANIEL K. INOUYE, Hawaii
SLADE GORTON, Washington	DENNIS DeCONCINI, Arizona

TIMOTHY C. WOODCOCK, *Staff Director*

CONTENTS

	Page
S. 2114	2
H.R. 5118	23

WITNESSES

Anamax Mining Co., prepared statement	50
Atwood, George E., chairman of the board and chief executive officer, Duval Corp., prepared statement	56
Avra Valley Irrigation District, prepared statement	53
Carruthers, Hon. Garrey E., Assistant Secretary of the Interior for Land and Water Resources	66
Prepared statement	66
Murphy, Lewis C., mayor, Tucson, Ariz., prepared statement	48
Norris, Max H., chairman, Papago Tribe of Arizona	70
Prepared statement	70
Udall, Morris, a Representative in Congress from the State of Arizona	44
Prepared statement	45

MATERIAL SUBMITTED FOR THE RECORD

Pima County Board of Supervisors, resolution No. 1982–22	62
Parties to Water Dispute in Arizona Find Solution That Could Be Model, article from the Washington Post	64
What Are Costs of S. 2114, document	69
Papago Tribal Council, resolution No. 155–81	71
Papago Tribe, amendments proposed	73
Steiner, Wes, Arizona Department of Water Resources, amendments proposed	73

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

U.S. Department of the Interior, Office of the Secretary—Central Arizona project Indian water delivery contract between the United States and the Papago Tribe	75
Letter from Max H. Norris, chairman, the Papago Tribe of Arizona, to Senator Cohen, with enclosure	85
Letter from Lewis C. Murphy, mayor, city of Tucson, to Senator Cohen, with enclosures	89

WATER CLAIMS OF THE PAPAGO TRIBE

MARCH 31, 1982

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9 a.m., in room S–205 Capitol, Senator Barry Goldwater (acting chairman) presiding.

Present: Senators Goldwater and DeConcini.

Staff present: Timothy C. Woodcock, staff director; Peter S. Taylor, general counsel; John Chaves, staff attorney; John Mulkey and Twinkle Thompson, professional staff.

Senator GOLDWATER. Good morning, gentlemen.

I apologize for this small room. It is not that we think in a small way of our Indians, it is just that the Federal Government does not know how to do things like we do out West.

At this time, without objection, I will place a copy of S. 2114 and H.R. 5118 in the hearing record.

[The bills follow. Testimony resumes on p. 44.]

II

97TH CONGRESS
2D SESSION

S. 2114

To provide water to the Papago Tribe of Arizona, to settle Papago Indian water rights claims in portions of the Papago reservations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11 (legislative day, JANUARY 25), 1982

Mr. DECONCINI (for himself and Mr. GOLDWATER) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To provide water to the Papago Tribe of Arizona, to settle Papago Indian water rights claims in portions of the Papago reservations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CONGRESSIONAL FINDINGS

SECTION 1. The Congress finds that—

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major

mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians with the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this Act, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this Act will—

(A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and

(B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe.

DEFINITIONS

SEC. 2. For purposes of this Act the term—

(1) "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot;

(2) "central Arizona project" means the project authorized under title III of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 887; 43 U.S.C. 1521, et seq.);

(3) "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476);

(4) "Secretary" means the Secretary of the Interior;

(5) "subjugate" means to prepare land for the growing of crops through irrigation; and

(6) "Tucson Active Management Area" menas the area of land corresponding to the area initially desig-

nated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

(7) "December 12, 1980, agreement" means the central Arizona project water delivery contract between the United States and the Papago Tribe.

WATER DELIVERIES TO TRIBE FROM CAP; MANAGEMENT PLAN; REPORT ON WATER AVAILABILITY; CONTRACT WITH TRIBE

SEC. 3. (a) As soon as is possible but not later than ten years after the date of the enactment of this Act, if the Papago Tribe has agreed to the conditions set forth in section 6, the Secretary acting through the Bureau of Reclamation shall—

(1) in the case of the San Xavier Reservation—

(A) deliver annually from the main project works of the central Arizona project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 4(a); and

(B) improve and extend the existing irrigation system on the San Xavier Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient dis-

tribution for agricultural purposes of the water referred to in subparagraph (A); and

(2) in the case of the Schuk Toak District of the Sells Papago Reservation—

(A) deliver annually from the main project works of the central Arizona project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 4(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under Arizona law.

(b)(1) In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out a

study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine—

(A) the availability of energy and the energy requirements which result from the enactment of the provisions of this Act, and

(B) the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of section 6(a).

(d) Nothing contained in this Act shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 12, 1980, agreement.

DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES; OPERATION AND MAINTENANCE

SEC. 4. (a) The water delivered from the main project works of the central Arizona project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago

Reservation as provided in section 3(a), shall be delivered in such amount, and according to such terms and conditions, as are set forth in the December 12, 1980, agreement, except as otnerwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the central Arizona project any portion of the full amount of water specified in section 3(a)(1)(A) and section 3(a)(2)(A), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

(1) agricultural water from the central Arizona project which has been contracted for but has been released or will be unused by the subcontractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the central Arizona project which exists by reason of the augmentation of the water supply available for use and distribution through the central Arizona project by subsequent Acts of Congress;

(3) water from any of the following sources or any combination thereof within the Tucson Active Manage-

ment Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(c) Where the Secretary finds he is unable to acquire and deliver quantities of water adequate to fulfill his obligation under subsection (a), he shall pay damages to the tribe in the amount of the actual replacement costs of such quantities of water as are not acquired and delivered.

(d) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall give preference to the acquisition of lands upon which water has

actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

(e) To meet the obligation referred to in section 3(a)(1)(A) and section 3(a)(2)(A), the Secretary shall, acting through the Bureau of Reclamation, as part of the main project works of the central Arizona project—

(1) design, construct, operate, maintain, and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, treatment plants, powerplants, and electric power transmission facilities which may be necessary for such purposes; and

(2) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this Act, the Secretary is authorized—

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals,

conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

(2) to use facilities constructed in whole or in part with Federal funds.

RECLAIMED WATER; ALTERNATIVE WATER SUPPLIES

SEC. 5. (a) As soon as possible, but not later than ten years after the date of enactment of this Act, the Secretary shall purchase reclaimed water in accordance with the agreement described in section 7(a)(1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(b) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by any additional treatment, including land filtration, of the reclaimed water acquired by the Secretary as provided herein, by any other means which renders such reclaimed water suitable for agricultural use, or by voluntary exchange of that reclaimed water for any other water suitable for agricultural use. To make available and deliver such water, the

Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities as are appropriate.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 7(b), an equivalent quantity of water from the following sources or any combination thereof—

(1) agricultural water from the central Arizona project which has been contracted for but has been released or will be unused by the subcontractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the central Arizona project which exists by reason of the augmentation of the water supply available for use and distribution through the central Arizona project by subsequent Acts of Congress;

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within the area—

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to purchase reclaimed water or to acquire other water provided for herein and deliver the quantities of water suitable for agricultural use as set forth in subsections (a), (b), or (c), he shall pay damages to the tribe in the amount of the actual replacement cost of such quantities of water suitable for agricultural use as are not acquired and delivered.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to

97-363 O - 82 - 2

beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group or community.

LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES; DISPOSITION OF WATER

SEC. 6. (a) The Secretary shall be required to carry out his obligation under section 4 (b)(C) and (e) and under section 5 only if the Papago Tribe agrees to—

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 3(a)(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and

withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under section 3(a)(1)(B) and section 3(a)(2)(B) only if the Papago Tribe agrees to—

(1) subjugate the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this Act, for the operation, maintenance. and replacement of these systems in accordance with sections 1 and 3 of chapter 140 of the Act of April 4, 1910 (36 Stat. 270, 272; 25 U.S.C. 385).

(c) The Papago Tribe shall have the right to devote all water supplies under this Act, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, and recreational use whether within or outside the

Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area. The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporarily disposes of water such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof.

OBLIGATION OF THE SECRETARY; CONTRACT FOR RECLAIMED WATER; DISMISSAL AND WAIVER OF CLAIMS OF PAPAGO TRIBE AND ALLOTTEES

SEC. 7. (a) The Secretary shall be required to carry out his obligations under section 4 (b), (c), and (e) and under section 5 only if—

(1) before December 31, 1982—

(A) the city of Tucson, the Secretary, and the Papago Tribe agree, after the enactment of this Act, that the city will make available at no profit to the city such quantity of reclaimed water as is adequate to deliver annually, as contem-

plated in section 5(a), twenty-eight thousand two hundred acre-feet of water;

(B) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others against the city of Tucson, and others, civil numbered 75–39 TUC (JAW); and

(C) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of—

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political

subdivision thereof, or any other person, corporation or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation or municipal corporation, under the laws of the United States or the State of Arizona; and

(2) the suit referred to in paragraph (1)(B) is finally dismissed.

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 5(c) if through such contracts, as exercised in conjunction with the contract required in subsec-

tion (a)(1)(A), it is possible to deliver the quantities of water required in section 5(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this Act.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 9 is in existence and the full amount authorized to be appropriated to the trust fund under section 9 has been appropriated by the Congress.

(e) The settlement provided in this Act shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section takes effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this Act.

STUDY OF LANDS WITHIN THE GILA BEND RESERVATION; EXCHANGE OF LANDS AND ADDITION OF LANDS TO THE RESERVATION; AUTHORIZED APPROPRIATIONS

SEC. 8. (a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this Act.

(b) If, on the basis of the study and analysis conducted under subsection (a), the Secretary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

(d) Land exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall

be managed by the Secretary of the Interior through the Bureau of Land Management.

ESTABLISHMENT OF TRUST FUND; EXPENDITURES FROM FUND

SEC. 9. There is hereby authorized to be established a trust fund for the benefit of the Papago Tribe in the amount of $15,000,000 to be invested by the Secretary in interest bearing deposits and securities including deposits and securities of the United States. The income accruing on such deposits and securities may only be used, pursuant to appropriations legislation, for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities (including pumping and power transmission facilities) on the Papago Reservation which are not the obligation of the United States under this or any other Act of Congress.

ARID LAND RENEWABLE RESOURCE ASSISTANCE

SEC. 10. If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Papago Tribe—

(1) price guarantees, loan guarantees, or purchase agreements,

(2) loans, and

(3) joint venture projects,

at a level to adequately cultivate acres at a maximum of acre-feet of water per acre, or to provide that quantity of water determined by such entity to be necessary to cultivate arid land crops.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. Effective October 1, 1982, there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

COMPLIANCE WITH BUDGET ACT

SEC. 12. No authority under this Act to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

SHORT TITLE

Sec. 13. This Act may be cited as the "Southern Arizona Water Rights Settlement Act of 1982".

O

II

97TH CONGRESS
2D SESSION

H. R. 5118

IN THE SENATE OF THE UNITED STATES

MARCH 8 (legislative day, FEBRUARY 22), 1982
Read twice and referred to the Select Committee on Indian Affairs

AN ACT

To provide water to the Papago Tribe of Arizona and its members, to settle Papago Indian water rights claims in portions of the Papago reservations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CONGRESSIONAL FINDINGS

SECTION 1. The Congress finds that—

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this Act, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this Act will—

(A) provide the necessary flexibility in the management of water resources and will encour-

age allocation of those resources to their highest and best uses; and

(B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe.

DEFINITIONS

SEC. 2. For purposes of this Act the term—

(1) "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot;

(2) "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 887; 43 U.S.C. 1521, et seq.);

(3) "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476);

(4) "Secretary" means the Secretary of the Interior;

(5) "subjugate" means to prepare land for the growing of crops through irrigation; and

(6) "Tucson Active Management Area" means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursu-

ant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

(7) "December 12, 1980, agreement" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.

WATER DELIVERIES TO TRIBE FROM CAP; MANAGEMENT PLAN; REPORT ON WATER AVAILABILITY; CONTRACT WITH TRIBE

SEC. 3. (a) As soon as is possible but not later than ten years after the date of the enactment of this Act, if the Papago Tribe has agreed to the conditions set forth in section 6, the Secretary shall—

(1) in the case of the San Xavier Reservation—

(A) deliver annually from the main project works of the Central Arizona Project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 4(a); and

(B) improve and extend the existing irrigation system on the San Xavier Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(2) in the case of the Schuk Toak District of the Sells Papago Reservation—

(A) deliver annually from the main project works of the Central Arizona Project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 4(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under Arizona law.

(b) In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson

Active Management Area and that part of the Upper Santa Cruz Basin not within that area. There are authorized to be appropriated such sums as may be necessary to carry out such study.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of section 6(a).

(d) Nothing contained in this Act shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 12, 1980, agreement.

DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES; OPERATION AND MAINTENANCE

SEC. 4. (a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation as provided in section 3(a), shall be delivered in such amounts, and according to such terms and conditions, as are set forth in the December 12, 1980, agreement, except as otherwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 3(a)(1)(A) and section

3(a)(2)(A), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the subcontractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress;

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be only to the extent such water may be

97-363 O - 82 - 3

transported within the Tucson Active Management Area pursuant to State law.

(c) Where the Secretary finds he is unable to acquire and deliver quantities of water adequate to fulfill his obligation under subsection (a), he shall pay damages in the amount of the then prevailing rate for municipal and industrial water from the Central Arizona Project for such quantities.

(d) No land, water, water rights, contract rights or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

(e)(1) To meet the obligation referred to in section 3(a)(1)(A) and section 3(a)(2)(A), the Secretary shall, as part of the main project works of the Central Arizona Project—

(A) design, construct, operate, maintain, and replace such facilities as are appropriate including any

aqueduct and appurtenant pumping facilities, treatment plants, powerplants, and electric power transmission facilities which may be necessary for such purposes; and

(B) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

(2) There is hereby authorized to be appropriated by this Act, in addition to other sums authorized to be appropriated by this Act, a sum equal to that portion of the total costs of phase B of the Tucson Aqueduct of the Central Arizona Project which the Secretary determines to be properly allocable to construction of facilities for the delivery of water to Indian lands as described in subparagraphs (A) and (B) of paragraph (1). Sums allocable to the construction of such facilities shall be reimbursable as provided by the Act of July 1, 1932 (Public Law 72–240; 25 U.S.C. 386(a)), as long as such water is used for irrigation of Indian lands.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this Act, the Secretary is authorized—

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

(2) to use facilities constructed in whole or in part with Federal funds.

RECLAIMED WATER; ALTERNATIVE WATER SUPPLIES

SEC. 5. (a) As soon as possible, but not later than ten years after the date of enactment of this Act, the Secretary shall purchase reclaimed water in accordance with the agreement described in section 7(a)(1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(b) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by any additional treatment, including land filtration, of the reclaimed water acquired by the Secretary as provided herein, by any other means which renders such reclaimed water suitable for agricultural use, or by voluntary exchange

of that reclaimed water for any other water suitable for agricultural use. To make available and deliver such water, the Secretary shall design, construct, operate, maintain, and replace such facilities as are appropriate.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 7(b), an equivalent quantity of water from the following sources or any combination thereof—

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the subcontractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress;

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within the area—

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to purchase reclaimed water or to acquire other water provided for herein and deliver the quantities of water suitable for agricultural use as set forth in subsections (a), (b), or (c), he shall pay damages to the tribe in the amount of the actual replacement cost of such quantities of water suitable for agricultural use as are not acquired and delivered.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to

beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group or community.

LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES; DISPOSITION OF WATER

SEC. 6. (a) The Secretary shall be required to carry out his obligation under sections 4(b)(C), and (e) and under section 5 only if the Papago Tribe agrees to—

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 3(a)(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and

withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under section 3(a)(1)(B) and section 3(a)(2)(B) only if the Papago Tribe agrees to—

(1) subjugate the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this Act, for the operation, maintenance, and replacement of these systems in accordance with sections 1 and 3 of chapter 140 of the Act of April 4, 1910 (36 Stat. 270, 272; 25 U.S.C. 385).

(c) The Papago Tribe shall have the right to devote all water supplies under this Act, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, and recreational use whether within or outside the

Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area. The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporarily disposes of water such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof.

OBLIGATION OF THE SECRETARY; CONTRACT FOR RECLAIMED WATER; DISMISSAL AND WAIVER OF CLAIMS OF PAPAGO TRIBE AND ALLOTTEES

SEC. 7. (a) The Secretary shall be required to carry out his obligations under section 4 (b), (c), and (e) and under section 5 only if—

(1) before December 31, 1982—

(A) the city of Tucson, the Secretary, and the Papago Tribe agree, after the enactment of this Act, that the city will make available at no profit to the city such quantity of reclaimed water as is adequate to deliver annually, as contemplat-

ed in section 5(a), twenty-eight thousand two hundred acre-feet of water;

(B) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others against the city of Tucson, and others, civil numbered 75–39 TUC (JAW); and

(C) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of—

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political

subdivision thereof, or any other person, corporation or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation or municipal corporation, under the laws of the United States or the State of Arizona; and

(2) the suit referred to in paragraph (1)(B) is finally dismissed.

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 5(c) if through such contracts, as exercised in conjunction with the contract required in subsec-

tion (a)(1)(A), it is possible to deliver the quantities of water required in section 5(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this Act.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 9 is in existence and the full amount authorized to be appropriated to the trust fund under section 9 has been appropriated by the Congress.

(e) The settlement provided in this Act shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section takes effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this Act.

STUDY OF LANDS WITHIN THE GILA BEND RESERVATION; EXCHANGE OF LANDS AND ADDITION OF LANDS TO THE RESERVATION; AUTHORIZED APPROPRIATIONS

SEC. 8. (a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this Act.

(b) If, on the basis of the study and analysis conducted under subsection (a), the Secretary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

(d) Land exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall

be managed by the Secretary of the Interior through the Bureau of Land Management.

ESTABLISHMENT OF TRUST FUND; EXPENDITURES FROM FUND

SEC. 9. There is hereby authorized to be established a trust fund for the benefit of the Papago Tribe in the amount of $15,000,000 to be invested by the Secretary in interest bearing deposits and securities including deposits and securities of the United States. The income accruing on such deposits and securities may only be used, pursuant to appropriations legislation, for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities (including pumping and power transmission facilities) on the Papago Reservations which are not the obligation of the United States under this or any other Act of Congress.

AUTHORIZATION OF APPROPRIATIONS

SEC. 10. Effective October 1, 1982, there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

COMPLIANCE WITH BUDGET ACT

SEC. 11. No authority under this Act to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this Act which, directly or

indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

SHORT TITLE

SEC. 12. This Act may be cited as the "Southern Arizona Water Rights Settlement Act of 1981".

Passed the House of Representatives March 4, 1982.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

By W. RAYMOND COLLEY,
Deputy Clerk.

Senator GOLDWATER. I guess, Moe, we will start off with you. This is your baby.

STATEMENT OF HON. MORRIS UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA, AND CHAIRMAN OF THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Mr. UDALL. All right, Senator, I thank you and I am delighted to be here this morning. I have a brilliant, penetrating, prepared statement which will bowl over everybody.

[Laughter.]

Mr. UDALL. I will submit my statement for the record, and just say a few words here.

Senator GOLDWATER. Yes.

Mr. UDALL. I would also like to be permitted to add to your support, Senator Goldwater, and to demonstrate the broad support for this legislation by submitting a number of statements: a statement by Mayor Lewis Murphy of Tucson, who is an outstanding national mayor and a member of the other political party, but a man who has worked very closely with us.

Senator GOLDWATER. He was my intern once. That is what started him.

Mr. UDALL. That is quite a good point.

Senator GOLDWATER. That is what the turning point was.

Mr. UDALL. I also have here a letter from Anamax Mining Co., signed by Mr. Wyman, the president, strongly supporting this legislation;

A letter from the Avra Valley Irrigation District of Marana, Ariz., signed by Ralph Wong, vice president, and also in strong support.

A statement of George Atwood, who is chairman of the board and chief executive officer of the Duval Corp.; and a resolution of the County Board of Supervisors of Pima County relating to the support of the legislation S. 2114. I think, Mr. Chairman, those are the supporting documents that I wanted to submit.

Senator GOLDWATER. Do you have anything else you would like to say.

Mr. UDALL. I would simply like to say to the Senate Select Committee that this is good legislation. It is an example of cooperation and federalism, I guess, in every sense of the word.

Tucson is one of the fastest growing communities in the country, as my colleagues here know. It has a serious water problem, probably as serious as any place in the country. There are two ways to handle Indian water claims. You can litigate them, which takes forever—I was talking to Senator Laxalt, and he told me there is a case in Nevada that has been going on for 50 years and they have spent $30 or $40 million, not for a drop of water, but for lawyers' fees and testimony and investigators, and the whole business of legal and court costs.

We, in southern Arizona, with the help of the congressional delegation, finally solved an Indian water problem over a 5-year period. We have a solution; we have a compromise. It will keep us out of court. It will settle the water future of Tucson so that people, the critically important people in industry and farming and our municipality will have a water secure future on which they can build.

So, we think S. 2114 is a good bill. It passed the House 311 to 50 a few weeks ago. It is a good sound piece of legislation. It is the way we ought to be going with these Indian claim problems, not only in the West, but in the East where we wrestle with some land problems. So, I would leave it with you on that basis, Mr. Chairman, and hope that we can get prompt action in this select committee.

Senator GOLDWATER. Thank you, Moe. The material you submitted will be included in the record at this point.

[The material follows. Testimony resumes on p. 64.]

PREPARED STATEMENT OF HON. MORRIS K. UDALL

The story of the Southern Arizona Water Rights Settlement Act is a classic: it is a story about people and water, and it began years and years ago.

I'm always reminding my colleagues that my district in Tucson and Pima County is special—to my knowledge, it's the largest city in the United States and one of the largest in the world that is solely dependent on underground wells for its total water supply.

All farming, all industry and the half-million people of Tucson are supplied with water from two basins that lie beneath the Tucson Valley.

Also located in that valley and using the same water are the Papago Indians. The Papagos, who are by heritage a farming people, live on two reservations in the Tucson Basin area: San Xavier, south of the center of town, and the Schuk Toak District, to the West and near our largest irrigation districts.

The San Xavier Reservation was established by President Ulysses S. Grant in 1874. The Schuk Toak District was established by President Woodrow Wilson in 1916. Both areas have a reserved water right of some kind, but no one has yet told the Tribe just exactly how much water they are entitled to.

Over the last several years, folks in my hometown of Tucson have become increasingly concerned about declining underground water supplies. Already, the land is beginning to crack as the water table drops. Water quality has been affected and well capacity has been reduced.

On top of this, in 1975, the Federal government, on behalf of the Papago Tribe, filed suit against some 1800 defendants in the Tucson area. The suit says that non-Indian water users have infringed the rights of the Papagos, and asks that those water users be enjoined from continued use of groundwater under Tucson. The defendants to the action include the City of Tucson, the University of Arizona, the Anaconda and the Anamax Copper Companies, the Pima Mining Company, the DuVal Corporation and major agriculture districts, to name a few.

A decree by the court ordering the wells of these entities shut down would probably sentence the whole county to die of thirst. It would certainly have a serious impact on the mines near Tucson, which produced almost 25 percent of the nation's total domestic output.

The water users in my part of the country are confused and angry. They want to know why, after all this time, the Federal government is coming in and saying, yes, Papago Tribe, you have a right to water from the Tucson Basin . . . and we're going to let a court decide who has to give up their water in order to supply yours . . .

Federal judicial doctrine provides that when Indian reservations are set up, they are entitled to water. But the doctrine doesn't say *how much* water. You can understand how that has created some uncertainty out West.

The United States is trustee for the Indians, and as trustee, it has a duty to protect the Indians' water. In Tucson, up until the filing of this lawsuit, the Federal government took little or no action to protect the Papagos' water. And visible signs of diminishing supplies were apparent: the Santa Cruz River flowed on the surface of the reservation when San Xavier was first established. But eventually the Santa Cruz literally went underground and its riverbed dried up. The groundwater table has steadily decreased ever since.

The Federal government, meanwhile, was busily working against itself: on the one hand, it remained lax in protecting the Papagos' water, but on the other hand, it encouraged development of municipal, industrial and farming interests—all of which *increased* demand on water supplies.

The mines are a good example. South of Tucson there are four major mining operations. The DuVal Corporation mines for copper and molybdenum. This

company located in the Tucson Valley at the instigation of the United States, under the Defense Production Act, and relied on the government's assurance that they would have adequate water.

Since then, DuVal has brought and retired about 17,000 acres of farm land, in order to reduce the demand on the groundwater supply. Other mines have done the same. All together, some 50,000 acres have been purchased and retired from irrigation use.

The mines have also been at the forefront of studies and tests to determine whether it is feasible to reuse effluent in the mining process. They have voluntarily implemented water conservation by recycling water, recovering water from tailing operations and recapturing and reusing seepage.

After these examples of conservation and after the government invited them to Southern Arizona, the mines now are being told that they and other non-Indian water users must bear the entire burden for restoring the Indians' water supply.

In another striking example, a local farmer approached the Papago Tribe with an offer to enter into a long-term lease to sink wells, put in a distribution system, give preferential hiring treatment to members of the Tribe, and farm the reservation for 25 years.

At the end of that time, the farmer would turn over the whole works to the Tribe . . . wells, distribution systems . . . everything. The Department of the Interior, as trustee, refused the offer. The municipal and industrial water users convinced the Secretary that intensive farming on the reservation would deplete the groundwater supplies available for other non-Indian water users . . . and that it was in the best interest of the whole community that the reservation not be developed for irrigation.

After decades of neglecting its trust duties, and particularly in light of the encouragement given the non-Indian sector of the community, and the reliance that has developed . . . it is unfair to ask that the entire burden of this settlement fall on this generation of Southern Arizonans.

Quantification of these Papago claims is the final piece of the picture for groundwater management in Southern Arizona. The roots go back to the CAP authorization . . . when the Congress told us that Arizona would have to find a way to control irrigated agriculture. That meant that Arizona would have to come up with a statewide, comprehensive groundwater code . . . to reduce groundwater use and impose mandatory conservation measures.

Arizona did that. In 1980 the State legislature passed a tough law that prohibits irrigation of new lands, requires pumps to be metered, and will require conservation and reduction in water use. That is the price we paid for getting a Federal reclamation project.

In addition, for every acre foot of water that irrigators use from the CAP, they will be required to reduce their groundwater pumping by an equal amount. The goal of the management plan is to bring the most critical basins back into balance by early in the next century.

In order for this basin management plan to work, it is essential to determine the water rights of the Papago Tribe.

For more than four years, the major water users and members of the Papago Tribe have been negotiating to see if this conflict couldn't be resolved without spending years in court and thousands of dollars on court costs and attorneys' fees.

The settlement incorporated in S. 2114 provides that, in addition to CAP water the Secretary is already obligated by contract to deliver to the Tribe, additional water will be provided, at the expense of the local water users. This additional water will come from groundwater pumping and reclaimed water made available by the City of Tucson.

The bill leaves it to the discretion of the Secretary and it is very unlikely the direct pipeline will ever occur.

The kind of negotiated settlement that this bill contains is a far preferable alternative to other means of resolving these intense, emotionally charged water claims issues.

If voluntary settlements like this one are not pursued, the United States has little choice but to go back to court. And court can be very time consuming and very costly. The Department of the Interior tells me that in one water rights case in the West, the parties have been litigating for almost 50 years at a cost of $40 million in court costs and attorneys' fees. And now, in that case, the

parties are beginning to explore the possibility of a voluntary settlement, like the one in the Papago bill.

Over the years, the Interior Committee has worked on several Indian Settlement Acts. Many of them have been land claims in Eastern states, and Congress and the Federal government have acted to settle those troublesome claims out of court. We felt there was some Federal responsibility involved and took a lead role.

Those of us in the West don't have Indian land problems, but we do have water problems. And the same rationale and understanding that we applied to the earlier land settlements can and should be applied here.

This settlement is the result of many long hours of negotiation and work. I believe it is a sound bill, and a balanced approach to the Indian water rights problem.

Mr. Chairman, I have received copies of testimony submitted to you by the Avra Valley Irrigation District, the Papago Tribal Council, the Anamax Mining Company, the Duval Corporation, the Pima County Board of Supervisors, and the Mayor and City Council of Tucson. These entities are the major water users in the Tucson Valley area, and they have played lead roles in the negotiations that produced this settlement. All of them strongly support S. 2114 and urge your favorable consideration of the legislation.

Mr. Chairman, I appreciate the opportunity to testify before you today and I, too, urge your support for S. 2114.

I congratulate Senator Goldwater and Senator DeConcini on their sponsorship of this legislation and for the effort they have made towards the resolution of this difficult issue.

TESTIMONY BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SUBMITTED BY MAYOR LEWIS C. MURPHY
TUCSON, ARIZONA
S.2114.

"SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT OF 1982"
MARCH 31, 1982

SENATOR GOLDWATER, MEMBERS OF THE SELECT COMMITTEE AND FRIENDS, I REGRET THAT I AM NOT ABLE TO BE WITH YOU THIS MORNING. AS YOU MAY KNOW, THE BILL BEFORE YOU TODAY IS A LANDMARK FOR MY COMMUNITY. KINDLY ALLOW MY REMARKS ON S.2114 TO BE SUBMITTED INTO THE RECORD OF YOUR PROCEEDINGS.

THE CITY OF TUCSON IS ONE OF MANY DEFENDANTS TO A LAWSUIT INITIATED BY THE PAPAGO INDIAN TRIBE AND THE UNITED STATES GOVERNMENT IN THE U.S. FEDERAL DISTRICT COURT OF ARIZONA TO DETERMINE THE GROUNDWATER AND SURFACE WATER RIGHTS OF ALL NAMED PARTIES IN THE UPPER SANTA CRUZ RIVER BASIN. THROUGH THE WATER RESOURCES COORDINATING COMMITTEE, A LOCAL GROUP OF SEVENTEEN MEMBERS REPRESENTING EVERY MAJOR WATER USER IN EASTERN PIMA COUNTY, THE CITY OF TUCSON HAS BEEN ACTIVELY PURSUING THE DEVELOPMENT OF A LOCAL WATER RESOURCES PLAN TO MINIMIZE GROUNDWATER OVERDRAFT WITH THE SPECIFIC GOAL OF RESOLVING THE PAPAGO INDIAN WATER RIGHTS CLAIMS. THIS COMMITTEE AND ITS INDIVIDUAL MEMBERS HAVE WORKED WITH ATTORNEYS FOR THE PAPAGOS TO DEVELOP HOUSE RESOLUTION 5118, THE COMPANION BILL TO S.2114. MANY OF THE COMMITTEE MEMBERS, INCLUDING THE CITY, WERE INSTRUMENTAL IN THE PASSAGE OF THE ARIZONA GROUNDWATER MANAGEMENT ACT, THE MOST COMPREHENSIVE STATE GROUNDWATER LEGISLATION IN THE UNITED STATES.

THE CITY OF TUCSON, AS WELL AS OTHER MAJOR WATER USERS IN EASTERN PIMA COUNTY, RECOGNIZES THAT LITIGATION IS EXPENSIVE AND TIME-CONSUMING. THE UNSETTLED WATER RIGHTS CLAIMS AND LAWSUIT HAVE HAD A DETRIMENTAL EFFECT ON PREVIOUS BOND SALES OF THE TUCSON WATER DEPARTMENT. TUCSON

SUPPORTS A LEGISLATIVE RATHER THAN LITIGATED SETTLEMENT. TO THIS END THE CITY SUPPORTS EXPEDITIOUS AND FAVORABLE CONSIDERATION OF S.2114 BY YOUR COMMITTEE, MR. CHAIRMAN, AND URGES YOUR COLLEAGUES PASSAGE OF THE MEASURE OFF THE FLOOR AS SOON AS PRACTICABLY POSSIBLE.

I HAVE ALSO PROVIDED SENATOR COHEN WITH A COPY OF A MEMORIAL ADOPTED BY THE TUCSON MAYOR AND COUNCIL ON MARCH 22, 1982, WHICH REAFFIRMS THE SUPPORT OF THE ENTIRE CITY GOVERNMENT IN THE PASSAGE OF THIS BILL. THANK YOU FOR YOUR CONSIDERATION.

ANAMAX MINING COMPANY
P.O. BOX 127, SAHUARITA, ARIZONA 85629
602-791-2610

March 29, 1982

Honorable William S. Cohen,
Chairman, Select Committee
on Indian Affairs
United States Senate
Washington, D. C. 20510

Subject: S. 2114 - Southern Arizona Water Rights Settlement Act

Dear Mr. Chairman:

Anamax Mining Company wishes to take this opportunity to voice its support for S 2114, introduced by Senators Goldwater and DeConcini, and also to express our appreciation for the consideration and hearing provided the bill by the Select Committee. We respectfully request this letter be inserted in the hearing record before the Select Committee.

Anamax Mining Company owns and operates a large open pit copper mine in the Upper Santa Cruz Valley south of the City of Tucson, Arizona. Anamax, together with three other major mining properties in the immediate vicinity, accounts for approximately 35 percent of the nation's domestic copper production. The mining and milling of copper and other ores necessitates the use of water and water for the Anamax operation is obtained from groundwater stored in the Upper Santa Cruz Valley.

Groundwater supplies in the Upper Santa Cruz are used by the City of Tucson, mining companies, agricultural interests and others. It is the only source of water in this part of southern Arizona and is being depleted at a much greater rate than it is being replaced. The Arizona Department of Water Resources estimates that the groundwater in the Upper Santa Cruz is being "mined" at a rate in excess of four times its replenishment. Under these circumstances, the settlement of the water rights claims of the Papago Tribe within the Upper Santa Cruz is of vital importance to Anamax.

Anamax has been engaged in litigation over its right to use groundwater for its operations practically since the inception of its mining activities. In response to the area's serious water imbalance, Anamax and other mining companies in the area have spent millions of dollars in the last 20 years to mitigate the problem. These efforts have included purchasing and retiring irrigated farm land from production, instituting costly water conservation methods which result in the maximum reuse and recirculation of mine process water, funding studies to obtain alternative water supplies and consistent support for the Central Arizona Project. Even so, the drawdown of the basin's groundwater continues.

It is in this context that all non-Indian water users in the Upper Santa Cruz must defend a lawsuit brought by the United States and the Papago Tribe in Federal District Court. This action has been pending for almost 7 years and seeks to determine the reserved and "immemorial" rights of the Tribe and its members. S 2114 and its companion bill which has been passed by the House of Representatives does not constitute a quantification of the Indians' rights, but represents a compromise settlement worked out after long years of negotiating among major water users. It constitutes a settlement without specific reference or relation to any reserved or other rights which may be vested in the Tribe. Accordingly, S 2114 should not be construed as a statement of the Senate regarding reserved rights of Indian tribes nor should it be considered a Congressional precedent which would affect other reserved rights claims of Indian tribes or the United States. The bill should be considered, however, as a precedent in Indian and non-Indian cooperation and compromise and should be viewed as a model which might have application in other areas of the West.

Anamax understands there has been opposition voiced to this bill from various quarters. One of the reoccurring themes of this opposition is that the bill constitutes a federal "bail out" of non-Indian water users in Southern Arizona and that local water users are not contributing to the solution. Anamax believes this view is unfair and inaccurate for two very basic reasons.

First, the quantity of water provided the Papagos in the bill comes from: 1) Central Arizona Project supplies which the United States has already contracted to deliver to the Tribe; 2) water derived, directly or indirectly by exchange, from municipal effluent generated by the City of Tucson; and 3) local groundwater resources. Accordingly, the water, other than already committed CAP water, will come from local sources and will be contributed by the City of Tucson and all local groundwater users whose supplies will be reduced by the amount of the Indians' pumping. Moreover, to say that local non-Indian users have not otherwise contributed to the settlement ignores the very substantial costs which have been incurred by these users, including Anamax, in water conservation measures as outlined above and in future efforts which will be necessary by local users to implement the provisions of the bill.

Secondly, to characterize the bill as a federal "bail out" ignores the substantial responsibility and culpability of the United States in the historical origin of the overall problem. For example, Anamax, in reliance on the mining and land laws of the United States, has made an investment of hundreds of millions of dollars in its mining operation. It obtained the water necessary for this operation pursuant to state and federal law. As trustee for the Papago Tribe, the United States had a legal and moral obligation to secure for the Indians the water to which they had a right and to prevent the infringement of this right by others. This, the United States did not do and this historical

breach of its fiduciary obligation to the Indians by the United States is a major reason for the present dilemma in southern Arizona.

Therefore, Anamax does not believe it is well-founded to assert that it has not contributed to the solution contained in the bill nor is it valid to claim the United States has no responsibility, financially and otherwise, to help provide a means for its resolution.

In conclusion, Anamax Mining Company supports S 2114 and urges favorable action thereon by the Committee and the full Senate. We appreciate this opportunity to submit our views.

Very truly yours,

ANAMAX MINING COMPANY

G. R. Wyman, President

GRW/SW:cs

cc: Honorable Barry Goldwater
Honorable Dennis DeConcini
Honorable Morris K. Udall

AVRA VALLEY IRRIGATION DISTRICT
P. O. BOX 96
Marana, Arizona 85238

March 29, 1982

Honorable William S. Cohen,
Chairman, Select Committee
on Indian Affairs
United States Senate
Washington, D.C. 20510

Subject: S. 2114 - Southern Arizona Water Rights Settlement Act of 1982

Dear Mr. Chairman:

Avra Valley Irrigation District would like to take this opportunity to express its support of S. 2114 which is being considered by the Select Committee. The District requests that this letter be submitted in the hearing record on the bill.

The Avra Valley Irrigation District consists of approximately 14,000 acres of irrigated farmland located in the Avra Valley and generally to the west and north of the City of Tucson. All irrigation water within the District is derived from groundwater pumped at great depths from under the Valley. Groundwater levels within the Valley have been declining for many years and this overdraft condition continues.

Landowners within Avra Valley have been intimately involved in the groundwater depletion problem in Southern Arizona for many years. This has included litigation with the City of Tucson which resulted in three decisions of the Arizona Supreme Court. As a result of those decisions the City of Tucson has purchased and retired approximately 12,000 acres of irrigated farmland in Avra Valley for the purpose of converting that use to municipal purposes in the adjoining Upper Santa Cruz Valley.

The District has also played a role in the negotiations which resulted in the compromise settlement which is reflected in S. 2114. The bill directly affects the Avra Valley in that the Schuk Toak District of the Papago Reservation is located entirely in the Valley and a significant amount of the San Xavier District lies within the Valley. At present the United States and the Papago Tribe have not filed a lawsuit in the Avra Valley but without a settlement of these claims such litigation is inevitable.

97-363 O - 82 - 4

Energy costs and pumping lifts within the Avra Valley already make conventional irrigated agriculture difficult and area farmers have responded with significant and technilogically advanced irrigation methods to reduce water use. Federal Court action regarding Indian water claims would frustrate these efforts and make agricultural production in the Valley more tenuous for all and impossible for many.

The existing farmland in Avra Valley presents a unique opportunity for water management in this area particularly as it relates to the Papago settlement contained in S. 2114. This arises from the fact that 28,200 acre feet of water to be delivered to the Indians under the bill is to be derived from Tucson municipal effluent. At this time this effluent flows north down the Santa Cruz River channel directly past irrigated lands within Avra Valley Irrigation District. The Indian lands referred to in the bill are upstream from Tucson. Therefore, if effluent is delivered directly to reservation lands, a costly effluent delivery system, separate from that of the Central Arizona Project, will be necessary.

S. 2114 empowers the Secretary to deliver this 28,200 acre feet by means of exchanges with other users for potable supplies which could be delivered in the main project works of the CAP. This use of CAP facilities is also contemplated and authorized in the bill.

At the present time water users within the Avra Valley Irrigation District together with other irrigators downstream from the City of Tucson are negotiating with the City for contracts to use effluent for the next 10 years. A clear potential exists for exchanges whereby the Secretary would receive CAP and groundwater from these landowners and Districts in exchange for effluent delivered to the Secretary under the bill. In turn, these CAP and groundwater supplies could be delivered to reservation lands through CAP facilities. This option would eliminate the necessity of a separate effluent delivery system to the Indians and greatly reduce the federal appropriation outlays which would be necessary to implement the bill.

Avra Valley Irrigation District believes the settlement and Compromise contained in S. 2114 represents a unique solution to a very difficult problem and contains adequate

flexibility so that the costs of implementation will be minimized for the United States. It also represents a settlement in which all area water users may participate and contribute. In conclusion, we urge favorable consideration of the bill by the Select Committee and the full Senate and we appreciate this opportunity to present our view.

Very truly yours,

AVRA VALLEY IRRIGATION DISTRICT

By

Ralph Wong
Vice President

RW/bjf

cc: Honorable Barry Goldwater
Honorable Dennis DeConcini
Honorable Morris K. Udall

STATEMENT OF GEORGE E. ATWOOD

CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER

OF THE DUVAL CORPORATION

Before the Senate Select Committee on Indian Affairs

March 31, 1982

This statement is submitted by Duval Corporation in support of S. 2114.

Duval Corporation operates two copper and molybdenum mines in the Upper Santa Cruz Valley south of the San Xavier Indian Reservation. Because of adverse economic conditions, both operations are currently shut down. During normal conditions, these two mines account for nearly 8% of the nation's copper production and 13% of the nation's molybdenum production. They employ over 2500 people.

Duval has long recognized the acute water shortage in Arizona and Pima County and has urged all water users to cooperate in water conservation and the construction of water augmentation projects.

Solely to conserve groundwater and with no legal obligation to do so, Duval has purchased extensive tracts of land in the Santa Cruz Valley to foreclose water use and to prevent excessive demands on the aquifer. To date, Duval has bought over 16,000 acres, only a small fraction of which is actively devoted to its mining operations. This idle and unproductive land includes over 7,000 acres of farms which Duval has taken out of production in recognition of the fact that there is insufficient water to

allow full utilization of all land in the Santa Cruz Valley.

By purchasing and keeping this land unproductive, Duval has made an enormous capital investment for the preservation of the groundwater supply in the Santa Cruz Basin for all who share that common groundwater supply. Other mining companies in the Santa Cruz Valley have followed suit; and their combined land holdings total over 47,000 acres, a substantial portion of which are retired farms. The farming and other uses of these lands which would occur if they were not being withheld from development would consume far more water than that presently consumed for mining.

Duval has encouraged water augmentation programs. It has contributed money and expertise toward engineering studies of the possible reuse of municipal sewage effluent in mining processes and continues to conduct feasibility studies along these lines. Duval ardently supports the Central Arizona Project and has offered to purchase 25,000 acre feet of Central Arizona Project water annually. Yet, because of Duval's groundwater rights acquisitions and its favorable physical location on the groundwater gradient, Duval is the best situated of all water users in the Tucson basin to continue to use groundwater. If it becomes feasible for Duval to use alternative water supplies, such as Central Arizona Project water and reclaimed sewage effluent, such use will be at much greater cost than its present use of groundwater; and the direct beneficiaries will be the other down-gradient groundwater users in the basin, including the Papago Tribe, <u>not</u> Duval.

Duval was one of the leading advocates of the 1980 Arizona Groundwater Management Act. This Act is the most comprehensive groundwater management statute in the United States. It will require the Arizona Department of Water Resources to promulgate a management plan for the Tucson area with the objective of arresting groundwater table declines and stabilizing water levels. This program will strictly control the development of new water uses and will require stringent conservation by all water users. Industrial users, such as Duval, will at all times be required to use the "latest commercially available conservation technology".

The Groundwater Management Act was passed in large part as a result of blunt threats by the federal government to withhold funding for the Central Arizona Project unless Arizona passed a statute which imposed meaningful groundwater management. Yet the Groundwater Management Act cannot be implemented without a realistic quantification of Papago Indian water rights claims. The San Xavier Papago Reservation, over which Arizona has no jurisdiction, is located within the Tucson Active Management Area. Without quantification of the Indian water rights and without consideration of Indian claims on non-Indian uses, the development and implementation of a management plan cannot proceed.

Duval and the citizens of Pima County have made another enormous contribution toward insuring long-term water supplies for the Papago Reservation by agreeing to absorb the impact of

a substantial increase in Indian groundwater use as provided in S. 2114. Because the management goal of the Tucson Active Management Area is to stabilize water levels, the provisions of S. 2114 which provide for an increase in Papago groundwater pumping up to 10,000 acre feet, is equivalent to a corresponding relinquishment of groundwater by non-Indians to Indians. To absorb this loss, strict conservation must be imposed on all non-Indian water uses. If necessary, existing uses will be curtailed or condemned. Except for Indian reservations, there will be an absolute prohibition upon the subjugation of new land for farming.

For its part, the Papago Tribe has agreed to reduce its water rights claims to amounts which (although excessive on a pro rata basis as compared to non-Indian water consumption) are nevertheless reasonable in view of the claims Indians might legally allege and, more importantly, to amounts which can be satisfied.

Despite Duval's reliance upon existing state water law, despite its enormous expenditures to acquire water rights (some of which derive directly from personal grants from the King of Spain predating the creation of the Papago Indian Reservations), despite Duval's unilateral water conservation efforts such as the retirement of irrigated land which conferred direct benefits on the Papago Tribe and others, despite the direct inducement to Duval by the United States government to construct its Sierrita Mine in the Santa Cruz Valley under the Defense Production Act and the government's determination that adequate water supplies existed, Duval finds itself embroiled in water

rights litigation brought by the United States.

The United States, on behalf of the Papago Indian Tribe and contrary to its prior encouragements, now asserts that virtually all water located in the Upper Santa Cruz Basin Duval, whose wells are located over 19 miles form the nearest Papago well, is threatened with having to cease pumping until the historic water levels beneath the reservation are restored.

Duval and others have made and will continue to make substantial contributions toward resolution of the water problems of the Papago Tribe and the Santa Cruz Valley. But the problem is one of federal creation and one for which the federal government should accept responsibility. After over a century of directly encouraging the development of non-Indian economies in southern Arizona, and after over a century of reliance by non-Indians upon the water policies of the federal government, the United States has filed a lawsuit in the federal District Court of Arizona asserting rights on behalf of the Papago Indian tribe, which if vindicated would virtually guarantee that no non-Indian could lawfully use water in southern Arizona.

The Indian water rights problem is a direct result of more than a century of federal neglect of its responsibilities to the Indian people and of federal encouragement of non-Indian economies dependent on water which the United States would now deny. It is unfair and unconscionable to expect the present citizens of Pima County, Arizona, to now bear the cost of this long-neglected federal responsibility.

3/31/82

The parties to the litigation and the proposed settlement embodied in S. 2114 have acted responsibly and in good faith. Citizens of the area have contributed millions of dollars and substantial time and effort toward implementing meaningful groundwater management. The non-Indian economy will further absorb the full impact of increased groundwater pumping by the Tribe.

This is a constructive settlement which Congress should endorse. Active management and cooperation are far preferable to continued litigation and animosity. S. 2114 would resolve this serious water rights dispute equitable and realistically. It would absolve the federal government from liability for its failure to act as trustee and for its conduct toward non-Indians in inducing reliance upon rights the United States would later claim did not exist. This bill will insure that the Papago Tribe shall have the water it needs for economic self-sufficiency, and will prevent catastrophic disruption of non-Indian economies.

Be assured of our continued support for S. 2114.

RESOLUTION NO. 1982-22

RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS RELATING TO THE SUPPORT OF THE UNITED STATES HOUSE OF REPRESENTATIVES RESOLUTION 5118 AND SENATE BILL 2114 PROVIDING FOR LEGISLATIVE RESOLUTION OF SOUTHERN ARIZONA WATER CLAIMS

The Pima County Board of Supervisors respectfully represents that:

WHEREAS, the Papago Tribe and the U. S. Government has initiated litigation in U.S. Federal District Court of Arizona against Pima County and other named parties to determine the ground and surface water rights of all water uses in the upper Santa Cruz River Basis; and

WHEREAS, this litigation is expensive, time consuming and casts serious clouds on the water rights of all parties; and

WHEREAS, the Pima County Board of Supervisors determined that it is in the best interests of the citizens of Pima County that a legislative solution of the Papago Tribe water rights claims be achieved as expeditiously as possible; and

WHEREAS, the Honorable Morris K. Udall, Congressman, Second Congressional District of Arizona, introduced House Resolution 5118, The Southern Arizona Water Rights Settlement Act of 1981, in the House of Representatives, the Congress of the United States; and

WHEREAS, House Resolution 5118 as introduced is designed to achieve a legislative solution to the Papago Tribe water rights claims in the upper Santa Cruz River Basin; and

WHEREAS, Senators DeConcini and Goldwater introduced S. 2005, which has almost the same wording as H.R. 5118 and is in furtherance of a legislative solution to Southern Arizona water rights claims; and

WHEREAS, the Board of Supervisors of Pima County supports the passage of H.R. 5118 and S.2114 and further believes that an expeditious settlement of the Papago water rights claims is in the best interests of not only the citizens of Pima County but all other water users in the upper Santa Cruz River Basin,

NOW THEREFORE BE IT RESOLVED by the Pima County Board of Supervisors:

That the Board of Supervisors of Pima County, Arizona, support passage of H.R. 5118 and S.2114 now pending before the House of Representatives and Senate of the United States, and in order to further show their support, staff is directed to send a copy of this Resolution to each member of the Congressional delegation at the earliest possible time.

PASSED AND ADOPTED this 22nd day of February, 1982.

PIMA COUNTY BOARD OF SUPERVISORS

By Sam Lena
Sam Lena, Chairman

E.S. Walker
E. S. "Bud" Walker

David Yetman

ATTEST:
Eugenia W. Wells
Eugenia W. Wells
Clerk of the Board

APPROVED AS TO FORM:
Rose Silver
Rose Silver
Special Counsel to the
Board of Supervisors

CLERK'S NOTE:

A quorum of three members were present, Lena, Walker and Yetman. A majority of the quorum voted as indicated.

Senator GOLDWATER. I thank you, Congressman Udall. It is always a pleasure to hear from you and I think that you are due the credit for hitting this solution.

I would like to make, as part of the record, now a story that was in the Washington Post praising this solution and when the Washington Post praises anything, it has to be real good. We will make that a part of the record.

[The article follows:]

[From the Washington Post, Mar. 30, 1982]

PARTIES TO WATER DISPUTE IN ARIZONA FIND SOLUTION THAT COULD BE MODEL

(By Al Senia)

PHOENIX.—After five years of intense negotiation, Indians and the political establishment in Arizona have reached an agreement on a long-standing water dispute that threatened to paralyze development in the southern part of the state.

Supporters of the recently concluded pact, which requires congressional approval because federal money is involved, say it marks the first time a wide assortment of competing special interests—farmers, miners, municipalities and Indians—have agreed on a detailed compromise on ground water supplies, avoiding costly litigation. They say the pact could serve as a model for other western areas facing similar water problems.

"It's a landmark decision for Indian tribes, to negotiate a settlement among ourselves without it being a court decision," said Gene Cronk, director of the Tucson Water District.

Representative Morris K. Udall (D-Ariz.), whose staff helped mediate the dispute and who introduced the settlement bill in the House of Representatives, said the bill "will help us to ensure the water future of southern Arizona."

The water wrangle centers on dwindling ground water supplies, which form the only source of water for cities, miners and farmers in the southern part of the state. The dispute raises an issue classic to past water disagreements in the West: Should the voracious water needs of a booming area economy be allowed to dwarf the competing interests of a relatively small, agricultural-based Indian tribe?

The Indians argued that off-reservation pumping adjacent to a reservation caused wells to dry up and their economy to wither. "The city put 20 wells right up against the reservation," said William Strickland, the attorney for the Papago Indian tribe, whose reservations are the focus of the dispute. "They knew what they were doing, and they were pumping like crazy. All of a sudden, the reservation wells go dry."

Strickland said that since pumping from the 20 wells began, cotton, wheat and alfalfa acreage on the two Papago reservations at San Xavier and Sells in Pima County near Tucson has shrunk from 1,700 acres to 800.

The new agreement will guarantee the Papagos a water supply. It requires the Interior secretary to deliver 37,800 acre-feet of water from the Central Arizona Project—a massive multibillion-dollar water diversion pipeline scheduled to deliver Colorado River water to Phoenix and Tucson by mid-decade—to the reservations within 10 years. An additional 28,200 acre-feet would be made available to the Indians from reclaimed water sources.

The settlement, called the "Southern Arizona Water Rights Settlement Act," also provides for an extension of reservation irrigation systems, the development of a water management plan and the establishment of a $15 million water trust fund.

The measure was passed by the House in early March, 311 to 50. It will be presented for hearing Wednesday before the Senate Select Committee on Indian Affairs. The committee will be chaired by Senator Dennis DeConcini (D-Ariz.) and Senator Barry Goldwater (R-Ariz.), who both support the measure.

But the bill has attracted some opposition. The Congressional Budget Office estimates the agreement will cost the taxpayers $96 million between 1983 and 1987. That figure, however, was sharply disputed by Jim Magner, a DeConcini staff assistant.

Magner said cost estimates "are quite soft" because different systems were used to figure costs in the Senate and House versions of the bill. He said the House measure contains costs associated with the Central Arizona Project—from which much of the Papago water will come—while the Senate version does not.

Magner was unable to precisely estimate the water settlement cost because it is still being computed. But he predicted it will be well below that advanced by congressional budget officials.

Staff members for DeConcini and Udall say they plan, in their arguments for the measure, to emphasize the money the federal government will save by avoiding what could have become an expensive decades-long court battle. The federal government sued off-reservation water pumpers on behalf of the Papagos in 1975, and all sides agree that action helped spur the settlement. An amended complaint lists 1,800 defendants—virtually every major water user in southern Arizona.

Under the agreement, the tribe will dismiss its legal action, limit its ground water pumping and give up claims to additional water in Pima County, which includes Tucson.

Cronk said the Papago suit placed "a cloud on the future" of development in the area. "We had the litigation standing over our heads. Every time you have a situation like that, your future's in doubt." But Cronk and other officials think the agreement, if approved by Congress will end the dispute.

The water battle was particulary acute because ground water levels in the area have been falling at an alarming rate, and Tucson and the surrounding areas are totally dependent on ground water supplies. Cronk estimates the underground water level has dropped two to 10 feet per year.

Officials are touting the Central Arizona Project and a rigid conservation program as solutions to the problem. But large cracks in the earth caused by continued underground pumping already have appeared in the area.

Senator GOLDWATER. Senator DeConcini, do you have anything you want to say?

Senator DECONCINI. Mr. Chairman, I just want to echo your applause of Congressman Udall. I think he has indeed taken the leadership in formulating some solution to the Papago Indian water claims and it has not been an easy road for him. You and I have been there with him for many, many years, even before I came here, but I know that Moe has labored with this for a long time, and I think the bill that is before us, which is identical to the one that Congressman Udall ushered through the House has great merit and that hopefully we can proceed here with finding a solution short of litigation.

I agree with you, Senator Goldwater, and certainly Moe Udall that, as you and I discussed many times, it is better to solve these things legislatively. I think the Papago Indian leadership and their council deserve a great deal of credit for their bending and finding a solution to this, short of litigation also.

They did not get everything they wanted out of this. They feel that there are some other areas that need attention and, of course, that is what compromise is all about. So, I am pleased that we are having these hearings and maybe we can get this thing moving on this side.

Senator GOLDWATER. Well, I want to congratulate the tribe, too, for having patience. I was first interested in this back in 1946 when I was a member of the First Streams Commission and that was one of the big problems we had back then, because there was a grave question as to whether the Papago land contained tributary streams to the Colorado. We were not able to solve it then and now with this bill it will be solved.

Dr. Carruthers, do you want to make a statement, or do you want to put it in the record?

Dr. CARRUTHERS. Mr. Chairman, I would like to submit my statement for the record and then make a few comments, if I might.

Senator GOLDWATER. Go right ahead.

STATEMENT OF HON. GARREY E. CARRUTHERS, ASSISTANT SECRETARY OF THE INTERIOR FOR LAND AND WATER RESOURCES

Dr. CARRUTHERS. I want to thank you for the opportunity to visit with the Senate Select Committee on Indian Affairs and represent the Department as it reviews S. 2114 and H.R. 5118.

As you know, the Department of the Interior of this administration is well know for its diplomacy, and diplomatically stated, Mr. Chairman, the Department does not like these bills and we oppose enactment.

The Department has exercised its trust responsibilities when it filed a suit on behalf of the Papagos and we identified in that lawsuit the city of Tucson, the State of Arizona, 6 mining companies, a farming enterprise, and 1,600 private water users as partially responsible for the Papago water problems.

Now, this bill says that all these people are excused. Let's let Uncle Sam carry the load financially one more time. Now the problem we see was created in Arizona. The water is in Arizona, principally under the control of the State, and the beneficiaries of these past practices are still there in Arizona.

Our question is: Why should Americans in Boston or South Dakota pay to resolve a problem that belongs principally to Arizona?

The people who are responsible for the water situation must contribute to any settlement, and I think to do otherwise would establish an undesirable precedent. Now, we have in the Department of Interior, 56 water adjudications pending. This model for solution is not appropriate. I understand that we normally drag out that complaint, that old chestnut, that Americans must pay because the Department of Interior has failed in its trust responsibilities. We have exercised our trust responsibilities and I personally can not believe that all of the Secretaries of Interior have been that negligent.

I think it is our obligation in the Congress and in the administration to begin the process of properly associating the benefits and costs of public and private actions and I think all parties need to be included in this. This bill does not do that, but it should.

You have a wonderful opportunity here in legislating relief for this situation. We are not averse to legislation. We are averse to not having the proper association of benefits and costs to those people who are associated with the problem and need to pay some of this. It should not be a burden strictly carried by the American taxpayer. So, I would encourage you to consider these kinds of legislation. This bill does not answer the question in our minds. Therefore, we oppose enactment of this Senate bill.

[The prepared statement follows:]

PREPARED STATEMENT OF GARREY E. CARRUTHERS, ASSISTANT SECRETARY OF THE INTERIOR, LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR

Mr Chairman and members of the subcommittee. I am appearing today to present the views of the Department of the Interior on S. 2114 and H.R. 5118. These two measures provide water for the Papago Tribe, settlement of Tribal water rights claims in portions of the Tribal reservations, and contain other related provisions.

We oppose enactment of these bills. While they settle the liabilities of all the non-Federal parties responsible for the water problem, they do so at Federal expense.

The Department of the Interior, in 1975 as trustee, filed suit on behalf of the Papago Indians to settle this problem in the courts. The defendants in that suit are: the city of Tucson, the State of Arizona; six mining companies, a farming enterprise; and 1600 other private water users in the basin. We feel the settlement act should include the defendants in the suit and that they should share in the costs to provide the Papago Indians with water rather than the general taxpayer. As a solution to the problem of competing water rights, a requirement that the Federal Government shoulder the burden of the settlement by supplying additional water supplies is clearly the most expensive Federal alternative.

The people who are responsible for the existing water supply situation not only are not required to contribute to the settlement but would be permitted to continue their full use of surface and ground water in an area where both are already oversubscribed. The exception is that the city of Tucson could sell 28,200 acre-feet per year of reclaimed effluent water to the United States at cost but without profit. However, if the city agrees to contribute and fails to supply the water, the Federal Government would be required to supply replacement water at Federal cost or to pay damages to the tribes for any water not delivered by the city. The Secretary also may be required to provide additional facilities to insure that the reclaimed water is suitable for agricultural use. The Federal Government, rather than the principal existing users, would be responsible for delivering the effluent provided by the city of Tucson to the reservation. These costs could be substantial, depending on the means used to move the water to the tribe.

In these bills, the Federal Government also would be responsible for delivery of Central Arizona Project water, and in the event water is not delivered to the tribe, the Federal Government would be required to pay damages to the tribe, even though other tribes in the service area would be required to take shortages.

We feel that these bills set new precedents and impose new liabilities on the Federal Government. We are presently involved in 56 water adjudication actions in approximately a dozen different river basins. For the Federal Government to pay costs similar to those in this bill without participation by the responsible non-Federal parties, would be costly and inequitable.

These bills could establish highly undesirable and costly precedents for settling those actions. As for the non-Indian interests against whom claims are currently being litigated, these parties would be free from liability even though they would not contribute to the costs of the settlement.

These bills guarantee, in law, the delivery of 37,800 acre-feet per year of Central Arizona Project water, for which the tribe now has a contract. No other Arizona tribe has such an ironclad guarantee. In fact, our contracts with the other Arizona tribes require a reduction in water delivered when dry periods occur as is required from other project users. In addition to the CAP allotment, the tribe is also guaranteed the additional 28,200 acre-feet of reclaimed water.

We estimate that the cost of these bills to the Federal Government could be $100 to $200 million dollars not including liabilities or costs to deliver Central Arizona Project water.

Our main concern is that the Federal Government and the general taxpayer are underwriting most of the cost of this proposal.

Mr. Chairman, this completes my statement. I would be pleased to answer any questions you may have.

Senator GOLDWATER. Well, I might remind you that every dime that has ever been spent for reclamation in the State of Arizona has been paid back; so, you do not have to worry about that because it will be paid back and I am getting a little tired of people knocking reclamation. If we did not have reclamation, we would not have food; we would not have the West, and we must put that water to use.

I have three questions for you. Does the administration support negotiated, out of court settlements on Indian water rights issues, which necessitate legislation in lieu of court mandated settlements?

Dr. CARRUTHERS. I think this administration would support negotiated settlements that would require legislation, yes.

Senator GOLDWATER. What role do you feel the Department of the Interior should play in the above resolutions?

Dr. CARRUTHERS. In this particular instance, we have already litigated. Now, our problem with your bill simply is the disassociation of cost and benefits from what has happened in the water situation in New Mexico. That must be corrected before we can assume any kind of responsibility for this legislation.

Senator GOLDWATER. Is the Department of the Interior willing to cooperate and work with Congress in trying to obtain the most fiscally reasonable method of affluent delivery as stipulated in section 7 of the Senate bill?

Dr. CARRUTHERS. Mr. Chairman, we are always willing to cooperate with the Congress. I do not believe that it should be the responsibility of the Federal Government to have the affluent delivery.

It should not be a cost to the Federal Government; it should be a cost to those people named in the litigation, the city of Tucson, the water users. Some of the other parties to the litigation should be responsible for that.

Senator GOLDWATER. Any questions, Moe?

Mr. UDALL. No. I do not have any questions, Mr. Chairman. I would like to add though, that there are major contributions being made by the local parties.

We are finding that wastewater is a very valuable asset. You find it in Phoenix and all over the West. And, the city of Tucson is contributing to this settlement water which it otherwise owns and could control and could probably get some pretty good money out of it.

The city of Tucson has done that. The other water users in the valley are giving up their rights to some ground water from our basin, and they support the Secretary's decision to allocate central Arizona project water to the Papago tribe.

I am willing to work with the administration to maybe make some changes in the bill if equitable adjustments could be made that would provide for a little more local participation, but the local water users have participated in this settlement.

I have never seen a situation in which statesmanship was exercised by so many groups. It is a formula for argument and disaster to throw the Indians and the mines and the city and the farmers and everybody in a room and say, "settle your water claims difficulty," but they did. And these Papago Indian leaders here have come under some criticism among their own people for having gone along with this.

This bill is a good deal for everyone and if we can work out some adjustments, look at the administration's complaints, I will be glad to sit down and work on that. I think Mr. Carruthers and the administration will meet us halfway and be willing to talk to us if we have some changes along the lines that you mentioned.

Dr. CARRUTHERS. Mr. Chairman, we are always pleased to cooperate in any way we can. We think the price of this settlement is excessive to the American taxpayers and, of course, if this committee would ask us, we would be more than willing to visit with you about that.

Senator DECONCINI. Mr. Chairman.

Senator GOLDWATER. Yes.

Senator DECONCINI. I would, for the record, point out that the risks, in my judgment, are so much greater if we litigate as to what the taxpayer very likely might have to pay on awards the court could easily hand down from the trust or lack of meeting the trust responsibility

from the Government's point of view. My only quarrel with the administration, and it goes back to the last administration even more so than this one, is the administration's failure to come up with any legislation to settle this matter. It was because of Congressman Udall, and you and I on this side, that we even have a bill that is before us to find a settlement. So, though the administration may oppose it, I am very disappointed they have not come up with any bill or indicated that they want to go out there and get into the trench and get their hands dirty trying to put everything together as has been done here, at least on the local level. I think this is a little bit late to come in and say, we do not like this because of the cost involved, when there has not been anything really put before us.

Senator GOLDWATER. I agree with you and that is what many people fail to realize; that these projects are not dreamed up overnight. All the lives of each one of us from Arizona here have been spent in attempting to get water on our arid land and there is no more arid land in Arizona than the land on which the Papago Indians live.

I have a document, the question of "What are the costs of S. 2114?" which I will make a part of the record.

[The document follows:]

WHAT ARE COSTS OF S. 2114

Since Senate bill doesn't have Rhodes amended re: Tucson Aqueduct—there are no costs associated with CAP water. Already signed contracts obligate the Secretary to build whatever facilities are necessary to deliver water to reservations. So any costs attributed to CAP are a red herring; they will be paid anyway, whether or not settlement occurs.

The possible costs are effluent delivery; the trust fund and possible damages.

Effluent delivery—CBO estimates maximum 50 million—that is the most expensive solution: direct pipeline. None of parties wants this—all anticipate that best solution is for Tribe to lease or swap effluent with farmers to north of Tucson. Farmers are now negotiating with city to acquire effluent during years before the settlement takes place . . . the locals will build their own delivery system . . . no federal cost. The farmers hope to then agree with the Tribe to take their effluent later, in exchange for non-Indian agriculture water, or groundwater. Although these talks are just beginning, they indicate a real interest on the part of the farmers, in use of effluent to firm up their water supplies.

Alternates to the direct delivery system will be much cheaper: the preceding paragraph indicates that if farmers built their own pipe, costs to United States would be minimal. Sale by the Tribe right at treatment plant would cost almost nothing.

Trust fund—the 15 million trust fund is to generate income for use by Tribe to develop their water. The corpus is not turned over to the Tribe. CBO says the 15 million is not a budgetary outlay (and.: has no impact on deficit)

Damages—Bill provides back-up for CAP: to make supply firm. Argument that no other CAP users get a "perpetually firm" supply is applicable: all non-Indian water users will go back to groundwater. The Papagos can't do that: the bill limits them to 10,000 AF. The Tribe is giving up all other water rights, including *Winters* rights and aboriginal rights. They must be assured a firm supply in return.

Estimates from Tramjoy Corey (consultants to Tribe) say there will be no shortages of CAP water for Tribe and M and I users for at least 20 years. After 20 years, estimated shortages are about 6,000 AF/yr. That 6,000 AF could be obtained by purchase and retirement of 1,200 acres of farmland (cost at $2,000/acre: a one-time cost of 2.5 million) or at damages rate of $50/AF (CBO estimate cost), $300,000 annually.

The United States will not actually pay any damages on the effluent (even though bill says it's a fall back). The city will contract with United States to deliver effluent. If city fails to deliver, they should pay damages. United States can make this clear in contract.

If city does provide effluent—then United States has to deliver. If United States fails to do so—then it should pay damages, and that is the situation the bill provision is aimed at.

A final cost is the O. and M. for the CAP deliveries. Under the CAP contract, the Tribe would pay O. and M. The bill provides that the United States should pay the O. and M.: the theory is that the water under the settlement is in lieu of the Tribe's reserved water. Reserved water is that which was present on or under the reservation when it was established: no O. and M. would have been required. O. and M. is at 1.5 annually.

I seriously doubt the 100.200 million figure. It's hard to pin it down, without knowing the manner for delivery of the effluent, but the known costs are:

15. trust,
1.7 annually O. and M.,
2.5 possible damages,
50 CBO maximum for effluent delivery.

The local community is contributing the actual water; the contribution of the United States is to deliver it.

Senator GOLDWATER. Do we have anyone from the Papago Tribe who would like to say a few words?

Mr. NORRIS. I have a statement, Mr. Chairman.

Senator GOLDWATER. Would you state your name so that the reporter can get it?

STATEMENT OF MAX H. NORRIS, CHAIRMAN, PAPAGO TRIBE OF ARIZONA

Mr. NORRIS. My name is Max H. Norris, chairman of the Papago Tribe of Arizona. I have the water commissioners that are with me today and a couple from the GU–VO area.

I have a prepared statement. I will put it in for the record as soon as I get it in.

I certainly appreciate the opportunity to be here today with everyone.

Thank you.

Senator GOLDWATER. Your prepared statement will be made part of the record at this point.

[The prepared statement, along with tribal resolution No. 155–81 follows:]

PREPARED STATEMENT OF MAX H. NORRIS, CHAIRMAN, PAPAGO TRIBE OF ARIZONA

Mr. Chairman, the Papago Tribe of Arizona supports the settlement of its water-rights claims as proposed in S. 2114 and H.R. 5118. We appreciate the support Congressmen Udall and Rhodes and Senators Goldwater and DeConcini have given to the principle of a negotiated settlement of these claims—a settlement that will benefit all of the people of Pima County and the government of the United States.

The Papago Tribe and the major water-users in Pima County—the City of Tucson, the mines, and the agricultural interests—have worked hard for five years to hammer out a difficult compromise. The bills before this Committee are the result of this labor.

S. 2114 contains certain amendments to H.R. 5118 that the Tribe has recommended to the Senate sponsors of S. 2114.

First, sections 3(a), 4(e) and 5(b) of the Senate bill stipulate that the Bureau of Reclamation rather than the Bureau of Indian Affairs shall be the lead agency for implementation of the construction and water-delivery provisions. This change is intended to simplify implementation of the legislation.

Second, Section 4(c) of S. 2114 requires that, if the Secretary finds he is unable to acquire and deliver the quantities of water provided for in the Tribe's CAP contract (37,800 acre feet), he shall pay damages in the amount of the *actual replacement cost* of the water not acquired and delivered. The corre-

sponding Section in H.R. 5118 limits the measure of damages to the *then prevailing rate for municipal and industrial water from the CAP*. The Tribe objects to the House language on the grounds that, owing to the fact that CAP water is highly subsidized, the damages provided for in the House bill would be substantially below the market value of replacement water and, thus, inadvertently penalize the Tribe. Without this change, the Tribe will oppose the settlement.

The Papago Tribe recommends that S. 2114 be further amended to clarify its intent, to extend the deadline for settlement, and to extend the Statute of Limitations for Papago claims arising from depletion of its water supply by non-Indian water users. The proposed amendments a noncontroversial. They are attached to my written statement.

In order to meet the concerns of members of the Gu Vo District, the Papago Tribe requests that the Committee Report clarify certain aspects of the legislation that can lead to misunderstandings among the Papago people. First, the Report should make clear that the legislation only affects the water rights of the San Xavier and Schuk Toak districts and has no effect on the water rights of any other district of the Papago Tribe. Second, it should make clear that reimbursable construction costs associated with the delivery and distribution system and deferred under the Leavitt Act will be charged only against the lands in the San Xavier and Schuk Toak districts that receive water and not against the lands in any other district. Third, the Report should indicate that nothing in the Act requires any district to accept income from the trust fund.

Mr. Chairman, in closing, the Papago Tribe takes issue with the cost estimates furnished to the Congress by the Department of the Interior in a document sent to the House of Representatives in late February. We have furnished Committee staff with a copy of this document. We note, as an example, that the Department estimates the cost for the Indian distribution system to be $16 million higher under H.R. 5118 (and, therefore, under S. 2114) than the cost under the Colorado River Basin Project Act. It attributes this supposed increase to the cost of subjugation and on-farm distribution. In fact, the subjugation costs under these bills are an obligation of the Tribe, not the United States; and the added cost for on-farm distribution is approximately $700,000.

We deeply appreciate your consideration of our rights, our needs, and our concerns.

RESOLUTION OF THE PAPAGO TRIBAL COUNCIL (H.R. 5118—WATER BILL)

RES. NO. 155–81

Whereas, Non-Indian surface water diversion and/or groundwater pumping near or bordering the San Xavier Reservation, the eastern portion of the Schuk Toak District, the Chui Chu area of the Sif Oidak District and the Gila Bend Reservation has resulted in the lowering of groundwater tables, the compaction of subterranean lands, the periodic flooding of land and the deterioration of water quality, all in derogation and to the detriment of the rights of the Papago people and its members; and

Whereas, the United States and the Papago Tribe and certain allotment owners, in their own right and on behalf of the Papago Tribe and individual allottees of the San Xavier District, filed suit in 1975 in the United States District Court for the District of Arizona (respectively Cause No. CIV 75–39 and CIV 75–51) seeking, among other remedies, a declaration of their rights in and to the use of surface and groundwaters; damages resulting from the use of surface and groundwater in derogation of their rights; and injunctive relief to prohibit withdrawals of surface and groundwaters of the Upper Santa Cruz Basin; and

Whereas, the Papago Council did appoint a Water Commission made up, among others, of members residing within the San Xavier, the Schuk Toak, the Sif Oidak, and the San Lucy Districts, in order to review and study all available materials and data relative to said water basins, and to negotiate and develop a legislative settlement of their respective water rights claims in said Basins, and to conduct public hearings in the Districts; and

Whereas, on the 14th day of February, 1980, the Papago Tribal Council passed Resolution No. 10–80, wherein it authorized and approved the negotiation and development of a legislative settlement of the water right claims of the Papago Tribe and its members in the water basins on, near or under the San Lucy, San Xavier, Schuk Toak and Sif Oidak Districts by means of a Congressional bill

to be enacted into Public Law of the United States which would provide the terms and conditions of the settlement and would establish the method and means of the implementing the settlement, and delegated to the Water Commission and the Chairman of the Papago Council full authority to negotiate and develop such legislative settlement; and

Whereas, on July 31, 1981, Congressman Udall introduced a Bill (H.R. 4363) to provide water to the Papago Tribe of Arizona and its members, to settle tribal and individual water right claims in portions of the Papago Reservation, and for other purposes; and

Whereas, on August 25, 1981, the Papago Tribal Council passed Resolution No. 104–81, wherein it cited the deficiencies in H.R. 4363 and recommended that H.R. 4363 be amended to correct said deficiencies; and

Whereas, on December 3, 1981, Congressman Udall introduced a new bill (H.R. 5118) to provide water to the Papago Tribe of Arizona and its members, to settle tribal and individual water right claims in portions of the Papago Reservation, and for other purposes; and

Whereas, the four affected Districts reviewed and studied the terms and provisions of H.R. 5118 and passed resolutions in regards thereto, citing certain deficiencies in H.R. 5118 (San Lucy District, December 12, 1981; Sif Oidak District on December 15, 1981; San Xavier District on December 16, 1981; and Schuk Toak District on December 17, 1981); and

Whereas, the Papago Tribal Council has reviewed H.R. 5118 and finds that this Congressional bill fails to make any provision for the settlement of the water rights claims of the Chui Chu area of the Sif Oidak District; and

Whereas, unless an amendment is made to H.R. 5118 to provide for and qualify the water claims of the Chui Chu area of the Sif Oidak District and to provide the means to put this water to a beneficial use prior to H.R. 5118 being enacted into law, the Papago Tribe will be forced to instigate litigation against all non-Indian water users in the Casa Grande-Maricopa-Stanfield water basin and against the United States Government on or before December 31, 1982; and

Whereas, although the Papago Tribal Council continues to commend Congressman Udall and his staff on their efforts and endeavors to draft a Congressional bill that would settle the San Xavier and Schuk Toak Districts' water rights claims, H.R. 5118 as introduced is still deficient in certain other aspects that could prove detrimental to the Papago Tribe: Now, therefore, be it

Resolved by the Papago Council, That it requests that H.R. 5118 be amended in the following manner:

One: To provide an equitable and reasonable firm water supply to the Chui Chu area of the Sif Oidak District and to provide the means to put this water to a beneficial use;

Two: To authorize the continued development of the Vaiva Vo irrigation project using groundwater recharge created by Reservation flood waters stored behind Tat Momolikot Dam;

Three: To quantify Gila Bend Reservation water rights and provide the means to put the water to a beneficial use;

Four: To provide the means to put the total quantity of water to be delivered to the San Xavier Reservation and the Schuk Toak District to a beneficial use;

Five: To define firm water supply as an assured annual quantity of water suitable for diversified agricultural cropping patterns;

Six: To provide for the improvement and extension of the existing irrigation system on the San Xavier Reservation and the protection of that water source.

The foregoing Resolution was duly enacted by the Papago Council on the 22nd day of December 1981, at a meeting at which a quorum was present with a vote of 1054.5 for; 0 against; 93.5 not voting; and 0 absent, pursuant to the authority vested in the Papago Council by Section 2 (a), (d) and (m) of Article V of the Constitution and By-laws of the Papago Tribe of Arizona as amended, ratified by the Papago Tribe on December 12, 1936, and approved by the Secretary of the Interior on January 6, 1937, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984). Said Resolution is not subject to review by the Secretary of the Interior and is effective as of the date of its enactment by the Papago Council.

THE PAPAGO COUNCIL,
By MAX H. NORRIS, *Chairman*.

Attest:
ROSE JOHNSON, *Secretary*.

Senator GOLDWATER. Well, it has been a pleasure to have you gentlemen and ladies back here, and I know that this water is going to mean a lot to you. In fact, it may be the solution of the economic problems that the 3.7 million acres, I think it is, have been faced with all of these years.

We have some amendments here that have been proposed by the tribe and without objection we will adopt those amendments to S. 2114.

Dr. CARRUTHERS. I certainly have no objection, Mr. Chairman.

Mr. UDALL. Nor do I.

[The amendments follow:]

AMENDMENTS TO S. 2114 PROPOSED BY THE PAPAGO TRIBE

1. In Sec. 4(c), on page 8, line 14, strike "subsection (a)" and insert in lieu thereof "section 3(a)".

2. In Sec. 4(e)(1), on page 9, line 9, after the comma following the word "construct" insert the words "and, without cost to the Papago Tribe" and add a comma.

3. In Sec. 7(a)(1), on page 15, line 20, strike the words "before December 31, 1982" and substitute the words "within one year of the date of enactment of this Act".

4. Following section 9, on page 20, add a new section 10 as follows:

Sec. 10. The functions of the Bureau of Reclamation under this Act shall be subject to the provisions of Public Law 93-638 (88 Stat. 2203; 25 U.S.C. 450).

5. Immediately following this new section 10, add a new section 11 as follows:

Sec. 11. The Act of July 18, 1966 (80 Stat. 304; 25 U.S.C. 2415), as amended, is hereby further amended by adding a new subsection (g) at the end thereof as follows:

"(g) Any action relating to water rights of the Papago Indian Tribe or its members brought by the United States on behalf of the Papago Tribe or by the Papago Tribe on its own behalf pursuant to the provisions of this section shall not be barred unless filed after December 31, 1984."

Renumber sections 10, 11, 12, and 13 as 12, 13, 14, and 15.

AMENDMENTS TO S. 2114 PROPOSED BY WES STEINER, ARIZONA DEPARTMENT OF WATER RESOURCES

1. On page 6, following line 20, add a new section 3(e) as follows:

(e) Nothing contained in sections 3(c) and 6(a) shall be construed to establish whether or not the reserved rights doctrine applies or does not apply to groundwater.

2. On page 15, following line 13, add a new section 6(d) as follows:

(d) Nothing in section 6(c) shall be construed to establish whether or not reserved water may be put to use or sold for use off of any other reservation to which reserved water rights attach.

Senator DECONCINI. Mr. Chairman, if I could just ask Mr. Norris: Part of this agreement, as I understand it, is an exchange of affluent water that has been worked out with the Papagos and the city; is that correct?

Mr. NORRIS. Yes, sir.

Senator DECONCINI. In fact, I think, the CBO, and others, indicate that because of not having to build a whole delivery system and having that source of quality affluent water, that the cost may be negligible or very, very minor as compared to what it might have cost had we had to build a whole water system to satisfy this claim; and the court very well could have done that.

Is that your understanding, Mr. Chairman?

Mr. NORRIS. That is my understanding, sir.

Senator DECONCINI. Thank you.

Senator GOLDWATER. I am informed that there will be some more amendments to the bill and they will be handled this afternoon.

So, if there is no objection—I know there is no objection from you—we will poll the other members of the committee, and without objection the bill is passed.

Senator DECONCINI. I like the way you operate, Mr. Chairman.

Mr. UDALL. I do, too. I am making notes about how this steamroller operates.

Senator GOLDWATER. No fooling around, you know. When you get going, you get moving.

Well, what else is there?

[Laughter.]

Mr. UDALL. I move we adjourn——

[Laughter.]

Mr. UDALL. I would so move if I were a member of the committee.

Senator GOLDWATER. Well, thank all of you for coming over. It is good to see you.

The hearing is adjourned.

[Whereupon, at 9:20 a.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL RECEIVED FOR THE RECORD

STRICKLAND & ALTAFFER,
Tucson, Ariz., April 7, 1982.

Hon. WILLIAM S. COHEN,
U.S. Senate, Dirksen Senate Office Building,
Washington, D.C.
(Attention of Peter Taylor).

DEAR PETE: Enclosed please find a copy of the Central Arizona Project Water Delivery Contract between the United States and the Papago Tribe entered into on December 11, 1980. In today's conversation with Bill Byler he stated that you had an urgent need for a copy of this document.

I again wish to thank you for your concern and help in regard to S-2114.

Sincerely,

STRICKLAND & ALTAFFER,
By WILLIAM E. STRICKLAND.

U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY—CENTRAL ARIZONA PROJECT INDIAN WATER DELIVERY CONTRACT BETWEEN THE UNITED STATES AND THE PAPAGO TRIBE

1. Preamble:

This contract, made this 11th day of December 1980, in pursuance generally of the Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto, the Boulder Canyon Project Act, 45 Stat. 1057, 43 USC § 614 et seq. (1928), the Colorado River Basin Project Act, 82 Stat. 885, 43 USC § 1501 et seq. (1968), and the various authorities and responsibilities of the Secretary of the Interior (hereinafter "Secretary") in relation to Indians and Indian Tribes as contained in Title 25 USC and 43 USC § 1457; and is between the United States of America (hereinafter "United States") and the Papago Tribe (hereinafter "Contractor") located on the Papago Reservation, Arizona.

Witnesseth, that:

2. Explanatory recitals:

Whereas, the Colorado River Basin Project Act provides, among other things, that the Secretary shall construct, operate and maintain the Central Arizona Project for the purpose of furnishing irrigation water and municipal water supplies to the water-deficient areas of Arizona and Western New Mexico and for other purposes; and

Whereas, Contractor is in need of Central Arizona Project water to sustain its agricultural base and for other tribal homeland purposes; and

Whereas, upon completion of the Central Arizona Project, water will be available for delivery to Contractor for such purposes in accordance with the Secretarial notice of December 1, 1980, 45 FR 81265;

Now, therefore, in consideration of the mutual and dependent convenants herein contained, it is agreed as follows:

3. Definitions:

When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof, the terms:

3.1 "Basin Project Act" shall mean the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968.

3.2 "Secretary" shall mean the Secretary of the Interior of the United States.

3.3 "Contracting Officer" shall mean the Secretary or his authorized designee acting in his behalf.

3.4 "Central Arizona Project" or "Project" shall mean the dams, reservoirs, aqueducts, canals, distribution and drainage works and appurtenant works authorized by Section 301(a) of the Basin Project Act and constructed by the United States pursuant to the provisions of said Act.

3.5 "Main System" shall mean those principal works of the Project listed as follows: Granite Reef Division, Orme Division (or suitable alternative), Salt-Gila Division, Tucson Aqueduct (Colorado River Source), Buttes Dam and Navajo Project, together with all appurtenances thereto and all lands, interests in lands and rights-of-way for such works and appurtenances.

3.6 "OM & R" shall mean the care, operation, maintenance, and replacement of the main system, or any part thereof.

3.7 "Operating Agency" shall mean the entity or entities authorized to assume OM & R responsibility of all or any part of the main system and approved for that purpose by the Contracting Officer.

3.8 "Project Water" shall mean (a) Colorado River mainstream water, (b) all other water conserved and developed by Central Arizona project dams and reservoirs and available for delivery by the United States, and (c) Return Flow captured by the Secretary for Project use.

3.9 "Notice of Availability of Project Water" shall mean the notice or notices which the Contracting Officer issues to Contractor to announce the availability of water for delivery to Contractor.

3.10 "Agricultural Water" or "Irrigation Water" shall mean Project Water used primarily in the commercial production of agricultural crops or livestock, including domestic use incidental thereto.

3.11 "Miscellaneous Water" shall mean water delivered from the Project for recreational and fish and wildlife purposes at other than Project facilities.

3.12 "Municipal and Industrial Water" hereinafter referred to as "M & I Water" shall mean water other than Agricultural Water or Miscellaneous Water delivered by means of the Main System.

3.13 "Return Flow" shall mean waste water, seepage, and ground water which originates or results from Agricultural Water, M & I Water, and Miscellaneous Water contracted for from the Central Arizona Project.

3.14 "Contractor's Reservation" shall mean the lands within the legal boundaries of contractor's reservation(s).

3.15 "Distribution Works" shall mean those facilities constructed or financed by the United States for the primary purpose of distributing Project Water to the Delivery Point(s) within the Contractor's Reservation after said Project Water has been transported or delivered through the Main System.

3.16 "Water Right(s)" shall mean all those water rights which Contractor or the United States owns or holds for the benefit of the lands of the Contractor's Reservation(s) and the people thereon.

3.17 "Nonproject Water" shall mean water acquired by Contractor other than from the Central Arizona Project.

3.18 "Year" shall mean the twelve month period between January 1 through the next succeeding December 31.

3.19 "Delivery Point(s)" is defined as the point(s) on Contractor's Reservation that are reasonably required, by agreement by the Contracting Officer and the Contractor, or selected by the Secretary, to permit the Contractor to put the Project Water to its intended use.

3.20 "Substantial Completion" shall mean that degree of completion which, in the determination of the Contracting Officer, will enable the transportation of Project Water to Contractor's Delivery Points.

3.21 "CAWCD" shall mean the Central Arizona Water Conservation District.

3.22 "CAP Subcontractor" or "Subcontractor" shall mean the person, agency or entity holding a subcontract between such party and CAWCD providing for the delivery of Project Water.

3.23 "CAP Allocation" shall mean the allocation of Project Water made to the Contractor by the Secretary. (See 45 Fed. Reg. 81265, dated December 10, 1980).

3.24 "Substitute Water" shall mean nonproject Water without limitation as to source, that the CAWCD or a Subcontractor is entitled to deliver to the Contractor in exchange for Project Water in accordance with a Substitute Water Contract approved by the Secretary. Substitute Water shall meet the requirements of all applicable Federal and State laws and regulations including but not limited to those relating to treatment and delivery and shall otherwise be of suitable quality for beneficial uses under a reasonable, diversified cropping pattern customary for lands of like character in the region.

3.25 "Substitute Water Contract" shall mean a contract between CAWCD or a Subcontractor and Contractor conforming to the terms of this contract and approved by the Secretary. The execution of a Substitute Water Contract and the approval of such a contract by the Secretary shall not be construed to constitute a determination by Contractor or the Secretary that the Substitute Water is water that the CAWCD or a Subcontractor is lawfully entitled to use and is lawfully entitled to deliver.

3.26 "Place of Need" is defined as the Contractor's Delivery Point(s) needed to integrate substitute water into the water delivery system on the Contractor's Reservation.

3.27 "Time of Need" is defined as the same delivery times and schedule for Substitute Water as is agreed to by the Contractor and CAWCD or the Subcontractor. Any necessary construction of facilities such as those for storage or reregulation to enable the CAWCD or Subcontractor to meet the delivery requirements shall be at the expense and risk of the Subcontractor.

3.28 "Delivery Facilities" shall mean all structures and facilities separate from the Main System and Distribution Works necessary to transport the proposed Substituted Water from the point where the CAWCD or Subcontractor's then existing facilities are located to the Place of Need. Delivery facilities shall be suitable for the intended purpose and shall be designed to appropriate engineering standards as determined by agreement between the Contractor and the CAWCD or Subcontractor or, in case of disagreement, by the Secretary.

3.29 "Time of Shortage" shall mean a calendar year for which the Secretary determines that a shortage exists pursuant to section 301(b) of the Basin Project Act, such that there is not sufficient Project Water in that year to supply up to a limit of 309,828 acre feet of water for Indian uses, and up to a limit of 510,000 acre feet of water for non-Indian Municipal and Industrial uses.

4. Delivery of water:

4.1 *Obligations of the United States.* Subject to the terms, conditions, and provisions set forth in this contract during such periods as it operates and maintains the Project, the United States will deliver Project Water to the Contractor. The United States will use reasonable diligence to make available to the Contractor the quantities of water specified in the schedule submitted by Contractor and shall make deliveries of Project Water to Contractor to meet Contractor's water requirements within the constraints of and in accordance with Section 4.6. After transfer of O.M. & R. to Operating Agency the United States will make deliveries of Project Water to the Operating Agency for subsequent delivery to Contractor as provided herein.

4.2 *Term of Contract.* This Contract shall become effective upon its execution and shall remain in effect for a period of 50 years beginning with the following Substantial Completion of the Project; *Provided*, that this Contract may be renewed upon written request by Contractor upon terms and conditions of renewal to be agreed upon not later than one year prior to the expiration of this Contract.

4.3 *Conditions Relating to Delivery.* Contractor hereby agrees that:

(a) The obligation of the United States to deliver water under this contract is subject to:

(1) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, 82 Stat. 885; the contract between the United States and the State of Arizona dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of *Arizona* v. *California et al.*, 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as now issued or hereafter modified.

(2) Executive A, Seventy-eighth Congress, Second Session, a treaty between the United States of America and the United Mexican States, signed at Washington, D.C., on February 3, 1944, relating to the utilization of the waters of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington, D.C., on November 14, 1944, supplementary to the Treaty, all hereinafter referred to as the Mexican Water Treaty.

(3) The express understanding and agreement by the Contractor that this contract is subject to the condition that Hooover Dam and Lake Mead shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section

13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction management, and operation of Hoover Dam, Lake Mead, canals and other works and the storage, diversion, delivery, and use of water to be delivered to Contractor hereunder.

(4) The right of the United States temporarily to discontinue to reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs or any works whatsoever affecting, utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, its being understood that so far as feasible the United States will (1) do so during periods of low water demands and (2) give reasonable notice in advance of such temporary discontinuance or reduction.

(b) There be in effect measures, adequate in the judgment of the Secretary, to provide for the internally integrated management and control of surface and groundwaters within Contractor's Reservation to the end that groundwater withdrawals are managed on a responsible basis.

(c) The canals and Distribution Works through which Project Water is conveyed after its delivery to the Contractor shall be maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses: *Provided*, the Contractor shall be relieved from this obligation if the United States does not make funds for this purpose available to Contractor following a timely request for such funds.

(d) The Contractor shall not pump nor permit others to pump groundwater from within the exterior boundaries of Contractor's Reservation for use outside said Reservation unless the Secretary and the Contractor agree, or shall have previously agreed, that a surplus of groundwater exists and drainage is required; *Provided however*, That where such pumping is presently permitted pursuant to contract, said pumping may continue throughout the life of said contract; *Provided further*, that such pumping may be permitted in other and additional cases subject to the appproval of the Secretary.

(e) The Contractor shall not sell or permit the sale or other disposition of any Project Water for use outside the Contractor's Reservation except:

(1) The Contractor may exchange Project Water and may change times and places of delivery of Project Water, subject to the approval of the Secretary; and

(2) The Contractor may dispose of Project Water credited against finally determined Water Rights to the same extent that said Water Rights may then be subject to disposition by Contractor.

4.4 *Delivery of Project Water Prior to Completion of Project.* Prior to completion of the Project works, water may be temporarily available for delivery to Contractor. When such water is available, the Contracting Officer will so notify Contractor and the water will be delivered on a "when available" basis at such terms as agreed upon between the Contractor and the Contracting Officer.

4.5 *Delivery Entitlements and Obligations.* The United States or the Operating Agency will not be required to deliver to the Contractor under this contract in excess of the following amounts of Project Water yearly during the life of the Project: Chuichu—8,000 acre feet; San Xavier—27,000 acre feet; and Schuk Toak—10.800 acre feet.

4.6 *Procedure for Ordering Water.* Following notice of Substantial Completion of the Project, Contracting Officer will issue a Notice of Availability of Project Water to Contractor. The Contractor will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer showing the quantities of water requested for delivery. If the Notice of Availability of Project Water is given by Contractor prior to July 1 of any year, the first schedule for the balance of the current year shall be submitted to the Contracting Officer within 30 days. If said Notice is given after July 1 of any year, the first schedule shall cover the balance of the then current year and the next succeeding full year. Thereafter, the amounts, times, and rates of delivery of Project Water to the Contractor during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(a) On or before October 1 of each year, the Contractor shall submit in writing to the Contracting Officer a water delivery schedule indicating the amounts of Project Water desired by the Contractor during each month of the following

year along with a preliminary schedule of water desired for the succeeding two years.

(b) Upon receipt of a schedule the Contracting Officer shall review it and, after consultation with the Operating Agency and the Contractor, shall make only such modifications in it as are necessary to insure that the amounts, times, and rates of delivery to the Contractor will be consistent with the provisions of section 4.3(a). On or before December 1 of each year, the Contracting Office shall determine and furnish to the Contractor the water delivery schedule for the next succeeding year which shall show the amounts of water to be delivered to the Contractor each month of that year.

(c) A water delivery schedule may be amended by the Contracting Officer upon the Contractor's written request. Proposed amendments shall be submitted by the Contractor within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer in like manner as the schedule itself.

4.7 *Points of Delivery—Measurement and Responsibility for Distribution of Water.*

(a) The Project Water to be furnished to the Contractor pursuant to this Contract will be delivered at the turnout(s) from the Main System to the Distribution Works to be constructed by the United States at such point(s) to be agreed upon in writing by the Contracting Officer and the Contractor, or in the event they are unable to agree, to be selected by the Secretary; *Provided however*, that in the event construction has reached that portion of the Project which will embrace such point(s) and their location has not been agreed upon, such points shall be established at locations determined by the Secretary.

(b) All water delivered to the Contractor shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the Operating Agency. Upon request of the Contractor, the accuracy of such measurements will be investigated by the Contracting Officer or the Operating Agency and Contractor, and any errors appearing therein adjusted.

(c) Neither the United States nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the turn out point(s) from the Main System to the Distribution Works serving the Contractor, and the Contractor shall hold the United States and the Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury or death arising out of or connected with the Contractor's control, carriage, handling, use, disposal, or distribution of such water beyond said turnout point(s).

4.8 *Water Acquired by Contractor Other than from the United States.* The provision of this Contract shall not be applicable to or affect Non-project Water or water rights now owned or hereafter acquired by the Contractor.

4.9 *Priority in Time of Shortages.* In Time of Shortage, deliveries of Project Water to miscellaneous and non-Indian agricultural uses will have been terminated: available Project Water shall be delivered to Indian contractors (including Contractor) and to non-Indian contractors for municipal and industrial uses according to the following formula:

IP=1/1+MI) where:

IP is the Indian Share of Project Water;

I is the Project Water used on Indian lands during the most recent calendar year which was not a Time of Shortage, up to a limit of 309,810 acre feet, less ten (10%) percent of the amount allocated to Indian Contractors for agricultural purposes; *provided that*, for the purposes of this formula, such ten (10%) percent reduction shall not operate to reduce the amount of Project Water used for Indian agricultural purposes to less than ninety (90%) percent of the Indian agricultural allocation. (Included in I is any water delivered under a Substitute Water Contract; *Provided that*, where substitutions occur at a ratio greater than one-to-one, the ratio shall be considered as if it were one-to-one for the purposes of this section.)

MI is the aggregate Project Water used by Subcontractors for municipal and industrial purposes during the most recent calendar year which was not a Time of Shortage up to a limit of 510,000 acre feet. (Excluded from MI is Project Water obtained under a Substitute Water Contract.

The non-Indian M&I water supply in Time of Shortage shall be the difference between Project Water and IP.

4.10 *Secretarial Control of Return Flow.* The Secretary reserves the right to capture all Return Flow flowing from the exterior boundaries of the Contractor's Reservation as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. Contractor may recapture and reuse or sell Return Flow within the exterior boundaries of Contractor's reservation; *Provided however*, that such Return Flow may not be sold for use outside the Contractor's Reservation unless the Secretary has given prior written approval.

4.11 *Exchange Water.* Where the Secretary determines that Contractor is able to receive Project water in exchange for or in replacement of existing supplies of water from surface sources other than the Colorado River to provide water supplies for water users upstream from the confluence of the Salt and Verde Rivers and Buttes Dam site, if such dam is then existent, the Secretary may require and Contractor agrees to accept said Project water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

5. Substitute water:

(a) CAP Water Allocations pursuant to this Contract may be exchanged for suitable nonproject Substitute Water on terms of Substitute Water Contracts between the Contractor and the CAWCO or a CAP Subcontractor approved by the Contractor and the Secretary or, in the alternative, by the Secretary in the event that the Secretary determines in accordance with Section 5(b) below that the Contractor is unreasonably withholding agreement to a proposed Substitute Water Contract. Water received by the Contractor pursuant to a Substitute Water Contract in amounts not in excess of Project Water exchanged for such Substitute Water shall be treated as Project Water for all purposes of this contract.

(b) A Substitute Water Contract may be approved by the Secretary with or without the joint approval of the Contractor if the Secretary first finds that:

(1) The Subcontractor is in compliance with the Arizona Groundwater code, and the water conservation requirements included in its subcontract with the CAWCD;

(2) The quality of the substitute water delivered under a Substitute Water Contract conforms with all applicable requirements of Federal and State law and is certified by appropriate quality tests prescribed by regulations of the Secretary to meet the standards for Substitute Water contained in Section 3.24 hereof;

(3) The delivery of Substitute Water is made at Time and Place of Need of the Contractor through Delivery Facilities, all as herein defined;

(4) All costs of treatment of substitute water and delivery of substitute water to Places of Need (including all additional costs connected with the design, construction operation and maintenance of treatment and distribution facilities to integrate the delivery of substitute and Project water to the lands of the Contractor) are borne by CAWCD and/or the Subcontractor without cost or risk to the Contractor.

(5) The following Conditions are or will be met:

(a) Prior to December 31, 2005:

(i) The total of all Project water exchanged does not exceed twenty percent (20%) of that Contractor's CAP Allocation;

(ii) Not less than two acre feet of substitute water shall be delivered to the Contractor for each acre foot of Project water exchanged. The amount of substitute water delivered to the Contractor shall be determined at the Place of Need as defined in paragraph 3.26.

(iii) OM&R charges payable by the Contractor shall not be increased on account of substitute water received in exchange.

(b) After December 31, 2005 whenever CAWCD or any Subcontractor can establish to the satisfaction of the Secretary that no prudent and feasible alternative to use of Contractor's allocation is available for current or reasonably anticipated M&I use:

(i) Exchange may be made on the conditions stated in Sec. 5(b) 5(a) for not in excess of fifty percent (50%) of the Contractor's CAP Allocation; and

(ii) Substitute water may be exchanged on not less than an acre-foot for-acre foot basis. The amount of substitute water delivered to the Contractor shall be determined at the Place of Need as defined in paragraph 3.26.

(6) Contracts for Substitute Water entered without Contractor approval shall provide:

(a) That Contractor is entitled to receive a fixed amount of Substitute Water during each year of the contract;

(b) That, in consideration of this, Contractor authorizes the Subcontractor to receive a fixed precentage of Project Water available to Contractor during each year of the contract which percentage shall be determined by dividing the fixed amount of Substitute Water to be delivered to the Contractor each year (unless said amount is at a ratio of more than one-to-one in which event the amount shall be the same as if the ratio were one-to-one) by the full amount of Contractor's CAP Allocation. The purpose of this provision is to encourage the Contractor to contract for Substitute Water in order to obtain a more firm water supply.

(c) Administration of Substitute Water Program.

Delivery of substitute water pursuant to a Substitute Water Contract shall be monitored at all times by the Operating Agency responsible for delivery of project Water and by the Secretary. In the event, for any reason, the Substitute Water is not available in the quantity and quality required herein and at the Time and Place of Need of the Contractor, the deficiency shall be satisfied from Project Water.

(d) Allocation Not to Release Rights.

Neither the allocation of Project Water to the Contractor nor the execution of this contract shall be construed to alter or release the right of any person or entity, including the Contractor, to assert rights to water all without limitation as to whether the water is surface or groundwater.

6. Other water:

Nothing in this contract shall prevent Contractor from agreeing with a water user to receive water from an off-reservation source where the water user does not condition delivery upon substitution for Project Water.

7. Payment of costs:

(a) Repayment of construction costs associated with Contractor's allocation of Project Water shall be subject to the provisions of 43 U.S.C. 1542 and 25 U.S.C. 386a.

(b) The Secretary shall fix OM&R charges payable by Contractor pursuant to 25 U.S.C. § 385 and regulations promugated pursuant thereto (25 C.F.R. Part 191). Project Water will not be delivered to Contractor unless the annual OM&R assessment is paid in advance, except where such payment is deferred, adjusted, or cancelled pursuant to 25 CFR 191.17.

(c) In the event the Contractor fails or refuses to accept delivery at the Deliveries Point(s) of the quantities of water available for delivery to and required to be accepted by it pursuant to this Contract, or in the event the Contractor in any year fails to submit a schedule for delivery as provided in Section 4.6 hereof, said failure or refusal shall not relieve the Contractor of its obligation to make the payments required in this Section. Contractor agrees to make payment therefor in the same manner as if said water had been delivered to and accepted by it in accordance with this Contract; *Provided however*, if Contractor fails or refuses to accept delivery of Project Water, Operating Agency is then able to sell that portion of Contractor's allotment of Project waters to another contractor that would not have otherwise received the additional increment of Project Water, then the Contractor's financial responsibility will be decreased by a like amount. The Secretary shall require Operating Agency to use due diligence to secure a reasonable price for said water. *Provided further* that Contractor shall be relieved from the obligation to pay for refusal to accept delivery if the United States does not make funds available to Contractor to construct Distribution Works and said Distribution Works are not in place to accept delivery.

(d) It is anticipated by both parties that a separate agreement will be entered into concerning the operation, maintenance, and replacement of the Distribution Works, the appointment of a Distribution Works Operating Agent and the setting and collection of appropriate charges for the care, operation, maintenance and replacement of the Distribution Works.

8. Distribution system—Environmental review:

Notwithstanding any other provision of this contract the United States will not deliver Project Water through Distribution Works to the Contractor's Reservation until additional environmental analyses, as necessary, relating to the Distribution Works have been completed by the United States in accordance with

the National Environmental Policy Act, and the design of Distribution Works suitable for delivery of Project Water to the Contractor pursuant to the terms of this contract is thereafter approved by the Secretary, it being the intent of the parties hereto that such approval is to be based on environmental considerations related only to the Distribution Works.

9. General provisions:

9.1 *Water and Air Pollution Control.* The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and shall obtain all required permits or licenses from the appropriate Federal authorities.

9.2 *Quality of Water.* The opeartion and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

9.3 *Rules, Regulations, and Determinations.*

(a) The Contracting Officer shall have the right to make, after an opportunity has been offered to the Contractor for consultation, rules and regulations consistent with the provisions of this contract and the laws of the United States and to add to or to modify such rules and regulations as he may deem proper and necessary to carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Contractor shall observe such rules and regulations.

(b) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor.

9.4 *Books, Records, and Reports.* The Contractor shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of project works, and to other matters the Contracting Officer may reasonably require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as he may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this contract.

9.5 *Notices.* Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor when mailed, postage prepaid, or delivered to the appropriate agent of the United States, or when mailed, postage prepaid, or delivered to the Papago Tribe, P.O. Box 837, Sells, Arizona 85634. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

9.6 *Contingent on Appropriation or Allotment of Funds.* The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

9.7 *Assignment Limited—Successors and Assigns Obligated.* The provisions of this contract shall apply to and bind the successors and assign of the parties hereto but no assignment or transfer of this contract or any part or interest therein shall be valid until approved by the Contracting Officer.

9.8. *Officials Not to Benefit.*

(a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(b) No official of the Contractor shall receive any benefit that may arise by reason of this contract other than as a landowner within the project and in the same manner as other landowners within the project.

9.9 *Equal Opportunity Clause.* During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for emloyment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or a understanding, a notice to be provided by the Agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicious places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated, suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (f) in every subcontractor or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; *Provided however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

9.10 *Title VI, Civil Rights Act of 1964.*

(a) The Contractor agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulations, no person in the United States shall, on the grounds of race, color, religion, or national origin be excluded from participation in, be denied the benefits of, or be other wise subjected to discrimination under any program or activity for which the Contractor receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Contractor by the United States, this assurance obligates the Contractor, or in the case of any transfer of

such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Contractor for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Contractor for the period during which the federal financial assistance is extended to it by the United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such federal assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees.

10. Credit against water rights:

At such time as Contractor's Water Rights are finally determined, the Project Water delivered to the Contractor under this contract will be credited against those Water Rights on such terms and conditions as may be agreed upon between the Secretary and Contractor at that time. Thereafter Contractor may use that Project Water for any and all uses consistent with such Water Rights or the uses described in this contract. Until such time as Contractor's Water Rights are finally determined the Project Water delivered to Contractor is supplemental water and is not credited against, or in any way related to, Contractor's Water Rights.

11. Exceptions to application of civil rights and other acts:

The provisions of Subarticle 7.1, 7.9, and 7.10 apply except where they conflict with Sections 701(b)(1) and 703(i) of Title VII of the Civil Rights Act of 1964, 73 Stat. 253–257, 42 U.S.C. s200e, which pertains to Indian Tribes and to preferential treatment given to Indians residing on or near a reservation or other applicable laws which exclude applicability to Indians or Indian reservations.

In witness whereof, the parties hereto have executed this contract the day and year above written.

THE UNITED STATES OF AMERICA,
By DANIEL BEARD, *Office of the Secretary.*
PAPAGO TRIBE,
By MAX H. NORRIS, *Chairman.*

Attest:
IDA L. JOSÉ
Secretarial Order No.
Delegation of authority: Central Arizona Project.

1. *Purpose.* The purpose of this Order is to delegate authority to execute water delivery contracts with the 12 Indian Tribes and Communities allocated Central Arizona Project water on December 1, 1980. (45 Fed. Reg. 81265, December 10, 1980.)

2. *Authority.* 43 U.S.C. §§ 614 *et seq.* (1928); 43 U.S.C. §§ 1501 *et seq.* (1968); 43 U.S. § 1457; Title 25, U.S. Code, 5 U.S.C. § 301.

3. Delegation. There is hereby delegated to Daniel F. Beard, Deputy Assistant Secretary, Land and Water Resources, the authority to execute contracts with the 12 Indian Tribes and Communities named in 45 Fed. Reg. 81265, December 10, 1980, for delivery of the Central Arizona Project water allocated to them on December 1, 1980.

4. *Effective date.* This Order is effective immediately, to remain in effect until February 1, 1981, unless first rescinded or modified.

CECIL D. ANDRUS,
Secretary of the Interior.

Dec. 11, 1980.

THE PAPAGO TRIBE OF ARIZONA
P.O. Box 837 • Telephone (602) 383-2221
Sells, Arizona 85634

January 14, 1982

Hon. William S. Cohen, Chairman
Senate Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Cohen:

Mr. Elmer Savilla, Executive Director of the National Tribal Chairmen's Association has written to me, and to others, expressing his concern that enactment of H.R. 5118 would create a precedent that could have a detrimental effect on the water rights of other Indian tribes,(see enclosures).

The Papago Tribe has no intention of creating such a precedent through its support for H.R. 5118.

However, should an amendment to H.R. 5118 be necessary to clarify this point, this letter is to inform you that the Papago Tribe would enthusiastically support such an amendment.

It is our hope that your Committee will enact legislation similar to H.R. 5118. We will, at a later date, suggest for your consideration certain other amendments that are consistent with the terms of settlement negotiations between the Papago Tribe and the major Arizona water users.

Your interest is deeply appreciated.

Very truly yours,

THE PAPAGO TRIBE OF ARIZONA

Max H. Norris

Max H. Norris, Chairman

MHN/j
encls.

GU-VO DISTRICT
BOX 8, AJO, ARIZONA 85321

Dear Senator,

Enclosed you will find the following;

1) Gu-vo District Resolution 10-82

2) A statement entitled, "Opposition to the Southern Arizona Water Rights Settlement Act."

These documents contain the reasons for which we, the people of Gu-vo District, are opposed to the Southern Arizona Water Rights Settlement Act.

We are a proud and traditional People who only wish to firmly hold on to the responsibility entrusted to us by our elders, ancestors and the creator, to protect the lands, waters and all that we hold sacred.

It is for this fundamental right that we are concerned about the Act and wish to be excluded from all that it contains.

We wish to thank you for hearing our objection and opposition .

THE PEOPLE OF GU-VO DISTRICT

ACKNOWLEDGED:

GU-VO DISTRICT CHAIRMAN

GU-VO DISTRICT REPRESENTATIVE

RESOLUTION OF THE GU-VO DISTRICT
(Opposition To the Southern Arizona Water Rights Settlement)

RES. 10-82

WHEREAS, There is now legistlation being considered by the United States Congress entitled "SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT" and,

WHEREAS, Such Act will provide water to people of San Xavier and Eastern Schuk Toak Districts and establish a trust fund for the development of agricultural lands and,

WHEREAS, Before such obligations under the Act are carried out, the Papago Tribe are required to waive and release their rights and all claims to water within certain water basins and dismiss existing lawsuits against numerous parties in Southern Arizona, including major mining companies, agricultural interests, and the City of Tucson and,

WHEREAS, Passage of such Act into Law will adversely affect the future position of all Indian water claims and is a direct violation of the Sacred Rights and Responsibities entrusted to us by our Elders, Ancestors and creator and,

WHEREAS, A written statement entitled "OPPOSITION TO THE SOUTHERN ARIZONA WATER SETTLEMENT ACT" containing our concerns and objections has been prepared to record our opposition.

NOW, THEREFORE, BE IT RESOLVED, We, the Council of Gu-Vo District representing our people, hereby state and declare we are opposed to the Southern Arizona Water Rights Settlement Act in its present form, as justified in the contents of the statement entitled "Opposition to the Southern Arizona Water Rights Settlement Act".

BE IT FURTHER RESOLVED, That We, the members of the Gu-Vo District will not accept any monies, services, and other entitlements provided by the Southern Arizona Water Rights Settlement Act, nor accept any responsibility for debts incurred.

BE IT FINALLY RESOLVED, That we as a Papago people shall never waive, release, sell, transfere, or barter, our aboriginal

RESOLUTION OF THE GU VO DISTRICT

(Opposition to the Southern Arizona Water Rights Settlement)

RES. NO. 10-82

Rights, any or all of the Sacred Rights entrusted to us by our elders, ancestors, and creator, for We, shall forever protect our Sacred Land, and our future descedents.

C E R T I F I C A T I O N

The foregoing resolution was duly inacted by the Gu-Vo District Council at a Special Meeting held on March 23, 1982, at which a quorum was present with a vote of 7 For; 0 Against; 0 Not Voting; 0 Absent.

THE GU-VO DISTRICT COUNCIL

William Lewis Sr., Chairman

ATTEST:

Arlene Antone, Secretary

CITY OF TUCSON

OFFICE OF THE MAYOR

LEWIS C. MURPHY
MAYOR

250 WEST ALAMEDA
P. O. BOX 27210
TUCSON, ARIZONA 85726
PHONE: (602) 791-4201

RECEIVED MAR 2 6 1982

March 23, 1982

The Honorable
Senator William S. Cohen, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Cohen:

Enclosed herewith are a Mayor and Council Memorial adopted by the City of Tucson on March 22, 1982, and my written testimony for use by yourself and fellow committeemembers in consideration of Senate Bill 2114. The City of Tucson is supportive of S.2114, and we appreciate your Committee's willingness to schedule and hear the Bill on March 31.

Sincerely,

L.C. Murphy

LCM:SED:ml

Enclosures: Mayor and Council Memorial
Testimony

ADOPTED BY THE
MAYOR AND COUNCIL
MAR 2 2 1982

A MEMORIAL

RELATING TO S2114 DATED FEBRUARY 11, 1982, THE SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT OF 1982.

TO THE CHAIRMAN, THE HONORABLE WILLIAM S. COHEN, AND MEMBERS OF THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS:

Your Memorialist respectfully represents that:

WHEREAS, the Papago Tribe and the U. S. Government have initiated litigation in U.S. Federal District Court of Arizona against your Memorialist and other named parties to determine the ground and surface water rights of all named parties in the upper Santa Cruz River basin; and

WHEREAS, this litigation is expensive, time consuming and casts serious clouds on the water rights of all parties; and

WHEREAS, your Memorialist has determined that it is in the best interests of the citizens of the City of Tucson that a legislative solution of the Papago Tribe water rights claims be achieved as expeditiously as possible; and

WHEREAS, the Senators from the State of Arizona, The Honorable Barry Goldwater and The Honorable Dennis DeConcini have introduced S2114, The Southern Arizona Water Rights Settlement Act of 1982, in the United States Senate; and

WHEREAS, S2114 as introduced is designed to achieve a legislative solution to the Papago Tribe water rights claims against your Memorialist and other named parties; and

WHEREAS, your Memorialist supports the passage of S2114 and further believes that an expeditious settlement of the Papago water rights claims is in the best interests of not only the citizens of Tucson but all other water users in the upper Santa Cruz River basin,

THEREFORE, YOUR MEMORIALIST, THE MAYOR AND COUNCIL OF THE CITY OF TUCSON PRAYS:

That the Senate Select Committee on Indian Affairs, as expeditiously as possible, recommend S2114 to the full United States Senate for their consideration and passage.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, MAR 2 2 1982.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

TJH:rh
3/22/82

PENNZOIL PLACE • P.O. BOX 2967 • HOUSTON, TEXAS 77001 • (713) 236-7963

March 30, 1982

DOUGLAS J. BOURNE
President

The Honorable James G. Watt,
Secretary of the Interior
Washington, D.C. 20240

Dear Secretary Watt:

Duval Corporation urges your support for Senate Bill 2114 introduced by Senators DeConcini and Goldwater, to provide water to the Papago Tribe of Arizona and for other purposes. This Bill will provide water to the Papago Tribe and will resolve litigation brought by the United States of America on behalf of the Papago Indian Tribe asserting all groundwater rights to the Santa Cruz Valley, Arizona, an area comprising some 3,500 square miles extending from Mexico to near the city of Phoenix. Since the Federal Government created this problem, the Federal Government should resolve the problem.

S. 2114 and the companion H.R. 5113 are the results of protracted negotiations acceptable to the Papago Tribe and the more than 1,500 defendants. These defendants who claim water rights in the Valley include the State of Arizona, the City of Tucson and the entire Tucson metropolitan area, agricultural operations, copper mining operations (Amax, Anaconda, ASARCO, Duval and Pima) which produce approximately 20% of the nation's copper and directly employs under normal conditions over 5,000 citizens. All of the defendants are totally dependent on groundwater in the Valley.

At the present time, pumping in the Valley is five times greater than the rate of recharge. Central Arizona Project water allocated to the Valley will be inadequate to arrest the continuing overdraft. To combat this critical situation, all non-Indian water users throughout the State of Arizona supported a comprehensive groundwater management statute in 1980, the effect of which will severely curtail future pumping, impose mandatory water conservation standards, extinguishment of existing uses, and an effective management program of groundwater use. Moreover, millions of dollars have voluntarily been expended by non-Indian users for the purpose of attempting to reduce water consumption in the Valley.

All of those efforts are in jeopardy due to the litigation instituted by the Federal Government. The Papago Tribe is entitled to pump unlimited quantities of groundwater. If the Federal Government litigation is successful, all non-Indian users may be enjoined from future pumping.

Fortunately, the Papago Tribe is willing to cooperate in the management of water consumption in the Valley, has agreed to limit its groundwater pumping, and to forego litigation. This action on the part of the Papago Tribe indicates a strong desire to join the mainstream of the Valley economy.

The resolution of these issues created by the Federal Government cannot occur without the enactment of S. 2114. H.R. 5118 passed by a vote of 311 - 50. Both S. 2114 and H.R. 5118 require minimal expenditures by the Federal Government to aid the Papago Tribe in becoming a more visible part of the economy in the Valley. The minimal expenditures required of the Federal Government will be deferred to a later date as the Central Arizona Project progresses and as the general economy recovers. The only remaining solution is the unconscionable one which the Federal Government has pursued to date, namely, to file litigation on behalf of the Papago Tribe against citizens of Arizona seeking to take away from them the valuable use of water, a right and use those citizens have exercised over decades until the Federal Government commenced litigation.

The Federal Government should accept the responsibility for the resolution of the problem it created. The Papago Tribe and the non-Indian users are agreeable to sacrifice certain rights and water uses and to cooperate in managing water consumption. The Federal Government should not abdicate its responsibilities.

We urge your support of Senate Bill 2114.

Yours truly,

DUVAL CORPORATION

D. J. BOURNE

DJB/sw

OPPOSITION TO THE SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT

There is now legistlation entitled "THE SOUTHERN ARIZONA WATER RIGHTS ACT" being considered by the United States Senate, and where a similar Act has already passed the House of Representatives on March 4, 1982, which will " . . . provide water to the Papago Tribe of Arizona and its members, to settle water rights claims in portions of the Papago reservations, and for other purposes."

Although we agree that it is essential that the people of San Xavier and Eastern Schuk Toak resolve their water claims for their future descendants, we feel there is no alternative but to object and oppose the Act in its PRESENT FORM, for the following points;

1) WAIVER OF WATER RIGHTS FOR TIME IMMEMORIAL

Under section 7 (a) (1) (c)(i),(ii) the Act does not require the Secretary to carry out his obligations UNLESS the Tribe, before December 31, 1982, executes a waiver and release, satisfactory to the Secretary, of any and all claims to water rights or injuries to water rights from time immemorial. (According to Webster's New Colliegate Dictionary, Immemorial is defined as extending beyond the reach of memory, record, tradition) So in effect the Tribe will be releasing their aboriginal rights as well as their Winters Rights. The Tribal Council are repeatedly told that such a waiver applies only to the areas concerned, San Xavier and Eastern Schuk Toak, to which the Act apparently makes quite clear, "within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area." But our concern on this point is WHAT kind of effect will our

enactment of such an Act have on our future descendants of the Western Districts? Our preception of the Act is that it will not only weaken our position of future, potential water claims but is also a direct violation of all that our ancestors have entrusted to us, protection of the lands, waters, and the future generations.

2) SETTING A PRECEDENT FOR ALL FUTURE INDIAN WATER CLAIMS

As stated above, we are very concerned of what kind of precendent we will set, by enacting the Act in its present form, not only for ourselves but for the WHOLE INDIAN NATION. Again, on this concern the Tribal Council have been repeatedly told that this Act will not set a precedent. According to the Congressional Record of March 4th, 1982, during the introduction and vote of the Act, the following statements were made by various Congressmen voicing their support; " I think we have shown here in this Bill the pathway that will lead us to a solution to water problems in other parts of the West. ,, . . . So this is I think, a good precedent and it will put to rest for now, at least and I think permanently, any division between the different groups on the division of water." , " I fully agree that this is probably the best way to settle all of these Indian water claims." By what authority are we setting this precendent? We feel that we do not have the right to set sucha precedent for which our descendants and the rest of the Indian Nation will undoubtingly suffer for. Although the Tribal Council have never been shown letters of opposition, it has been clear that such letters were sent to the Tribal Administration and that several tribes are opposed to the Act

3) POSSIBILITY OF TRIBE INCURRING COST OF CONSTRUCTION OF WATER DELIVERY FACILITIES.

Under section 4 (e)(2) the following statement is made, "Sums allocable to the construction of such facilities shall be reimbursable as pro-

vided by the Act of July 1, 1932 (Public Law 72-240; 25 U.S.C 386(a)) as long as such water is used for irrigation of Indain lands." This section is not to clearly degined and since there are no references immediately, readily available to us, we have not fully researched this area. Our tentative understanding is that we, THE PAPAGO TRIBE, not only San Xavier and Schuk Toak, will be responsible! Considering our past financial problems, we cannot conceive the idea of incurring such an immense debt, totaling multi-millions. Should our understanding be correct, there is only one item that would compensate such a debt, and that is our sacred lands, to which we are entitled to protect, and save for our descendents, as our ancestors did before us, for us.

4) THE TRIBAL COUNCIL HAVE NOT HAD THE PREVILEDGE OF HEARING BOTH SIDES OF THE ISSUE.

Through out the whole process and the progress of the Act, from its initial draft to its present status, the Tribal Council have been presented the positive aspects of the Act. During its July meeting Mr. Mark Ulmer offered his opinion and analysis of the Act the Tribal Council by Resolution 86-81 requested that such analysis be prepared and submitted for Council consideration. This analysis have yet to presented to the Tribal Council or any of the districts directly involved in the Act.

Although there are other minor concerns of the Act. The concerns stated on the previous pages are the main reasons that we are objecting and opposing the SOUTHERN ARIZONA RIGHTS SETTLEMENT ACT, for we as a people shall never waiver, release or sell the sacred rights that our ancestors granted to us. We shall uphold our responsibilities to which our elders and ancestors entrusted to us.

We will not allow ourselves to be apart of anything having even a slight possibility of requiring us to violate the sacred rights. We also, refuse to obligate our future descendants to such debts beyond their capabilities of repayment.

Lastly, we ask only that the Tribal Council be granted the priviledge to hear, and consider all aspects of this highly complex issue, for it is a very complex issue.

○